

Manual 3

Acquisition Projects

December 2010

Table of Contents

Section 1 Introduction	1
When to Use this Manual	1
About RCO	2
Manual Effective Date	2
Quick Step Guide	2
Section 2 Eligible Projects and Costs.....	4
Eligible Projects	4
Eligible Project Costs	12
Ineligible Projects	20
Ineligible Project Sponsors	23
Ineligible Costs	23
Other Eligibility Requirements	23
Section 3 Application Requirements.....	30
Project Scoping	30
Landowner Acknowledgement of Application	30
Local Jurisdiction Review (Washington Wildlife and Recreation Projects Only).....	31
Section 4 Acquisition Procedures	33
Acquisition Procedures.....	33
Relocation Procedures.....	35
Section 5 Appraisal Requirements	37
Just Compensation.....	37
Appraisal and Review Appraisal Standards	37
Appraiser and Review Appraiser Qualifications	41
Appraisal Costs	42
Section 6 Other Requirements for Each Transaction.....	43
Encumbrances and Title Insurance	43
Preliminary Title Review	44
Complementary Covenants or Deed Restrictions from Other Funders	45
Hazardous Substances Certification	45
Buying Contaminated Property.....	47
Property Boundary Map Requirements	48
Section 7 Post-Award Issues	50
Escrow Payments	50
Funding Acknowledgement and Signs.....	51
Inspections	52
Conservation Easement Monitoring.....	52
Scope Changes	52

Compatible Uses.....	52
Income and Income Use	53
Acquisition for Future Use.....	54
Converting the Use of an RCO Funded Acquisition Project.....	54
Removing or Changing a Deed of Right.....	55
Public Disclosure Rules.....	55
Who Makes Decisions.....	55
Appendix A Deed of Right (Recreation)	58
Deed of Right to Use Land for Public Outdoor Recreation Purposes	58
Appendix B Deed of Right (Conservation)	65
Deed of Right to Use Land for Conservation Purposes	65
Appendix C Deed of Right (Salmon Recovery)	72
Deed of Right to Use Land for Salmon Recovery Purposes	72
Appendix D Conservation Easement Requirements.....	79
Appendix E Farmland Conservation Easement Templates.....	91
Farmland Conservation Easement Templates.....	91
Appendix F Baseline Inventory	92
Baseline inventory	92
Appendix G Assignment of Rights	94
Assignment of Rights Template	94
Appendix H Landowner Acknowledgement Form.....	105
Appendix I Voluntary Acquisition	106
Voluntary Acquisition Notice to Owner	106
Appendix J Just Compensation and Relocation Notice to Owner	109
Just Compensation and Relocation Notice to Owner.....	109
Appendix K Preliminary Title Report and Commitment Checklist.....	112
Preliminary Title Report and Commitment Checklist.....	112
Appendix L Hazardous Substances Certification	115
Hazardous Substances Certification	115
Appendix M Property Assessment Checklist.....	116

Section 1

Introduction

In this section, you'll learn about:

- ✓ When to use this manual
- ✓ Where to get additional information
- ✓ Quick Step Guide

When to Use this Manual

This manual¹ provides basic information about policies for acquiring land with grants from the Recreation and Conservation Funding Board and Salmon Recovery Funding Board. Use this manual, along with the policy manuals for individual grant programs below, for all acquisition projects in these grant programs:

Aquatic Land Enhancement Account (ALEA)	Manual 21
Boating Facilities (BFP)	Manual 9
Firearms and Archery Range Recreation (FARR)	Manual 11
Land and Water Conservation Fund (LWCF) ²	Manual 15
Nonhighway and Off-Road Vehicle Activities (NOVA)	Manuals 12, 13, 14
Salmon Recovery (SRFB)	Manual 18
Washington Wildlife and Recreation (WWRP)	Manual 10
Youth Athletic Facilities (YAF)	Manual 17

¹ Authority for the information in this manual is found in several statutes and rules: Revised Codes of Washington 46.09.240, 77.85.120 (1)(d), 79A.15.060(1), 79A.15.070(5), 79A.25.080(2), and 79A.25.210, and Titles 286 and 420 Washington Administrative Codes.

² The "Land and Water Conservation Fund Grants-in-Aid Manual" (U.S. Dept. of Interior, National Park Service) provides additional guidance for Land and Water Conservation Fund grants.

About RCO

The Recreation and Conservation Office (RCO) supports the Recreation and Conservation Funding Board and Salmon Recovery Funding Board. RCO is a state agency that manages multiple grant programs to create outdoor recreation opportunities, protect the best of the state's wildlife habitat and farmland, and help return salmon from near extinction.

Where to Get Information

RCO

Natural Resources Building
1111 Washington Street
Olympia, WA 98501
E-mail: info@rco.wa.gov

Telephone: (360) 902-3000
FAX: (360) 902-3026
TTY: (360) 902-1996
Web site: www.rco.wa.gov

Mailing Address

PO Box 40917
Olympia, WA 98504-0917

Appendixes Online

Many of the appendixes are available online at the RCO Web site so they may be copied and easily filled out.

Manual Effective Date

This version of "Manual 3: Acquisition Projects" applies to all acquisition projects funded as of December 2010 for Salmon Recovery Funding Board grant awards and as of January 1, 2011 for the Recreation and Conservation Funding Board. Acquisition projects already underway before these effective dates follow policies in "Manual 3: Acquiring Land" dated March 8, 2007.

Provisions in this manual may be applied to acquisition projects funded before the effective date of this manual upon mutual agreement between RCO and the grant recipient.

Quick Step Guide

There are a number of key steps to completing an acquisition project successfully with RCO. Below is a Quick Step Guide to help project sponsors through the important phases of an acquisition, with references to specific sections of this manual for more detailed instructions.

Quick Step Guide	Section
Buying property without a signed contract with RCO?	Section 2
Application Requirements	Section 7
<input type="checkbox"/> Landowner Acknowledgement <input type="checkbox"/> Washington Wildlife and Recreation Program Jurisdiction Review	
Due Diligence	
<input type="checkbox"/> Review the preliminary title report	Section 6
<input type="checkbox"/> Clear any title actions and quell outstanding interests	Section 6
<input type="checkbox"/> Initiate cultural resources review	Section 2
<input type="checkbox"/> Ensure compliance with acquisition procedures	Section 4
<input type="checkbox"/> Get appraisal and appraisal review	Section 5
<input type="checkbox"/> Survey of property boundaries, if needed	Section 6
<input type="checkbox"/> Conduct environmental audit	
<input type="checkbox"/> Determine any relocation needed	Section 4
<input type="checkbox"/> Prepare baseline documentation (conservation easements only)	Section 2
<input type="checkbox"/> Provide RCO with draft legal documents for review	Section 2
<input type="checkbox"/> Obtain approval for any interim land uses on the property	Section 2
Closing	
<input type="checkbox"/> Request escrow payment, if needed	Section 7
<input type="checkbox"/> Record legal documents	Section 2
<input type="checkbox"/> Obtain title insurance policy	Section 6
After Closing	
<input type="checkbox"/> Provide RCO with copy of recorded legal documents	Section 2
<input type="checkbox"/> Provide RCO a copy of the final title insurance policy	Section 6
<input type="checkbox"/> Complete any relocation	Section 4
<input type="checkbox"/> Finalize cultural resources review	Section 2
<input type="checkbox"/> Demolish ineligible structures	Section 2
<input type="checkbox"/> Install fencing, if needed	
<input type="checkbox"/> Remove noxious weeds, if needed	
<input type="checkbox"/> Install signs	Section 7
<input type="checkbox"/> Submit stewardship plan, if required or needed	Section 2
<input type="checkbox"/> Complete final report in PRISM	
Stewardship	
<input type="checkbox"/> Ensure any approved interim land uses are discontinued within 3 years	Section 2
<input type="checkbox"/> Submit conservation easement monitoring report once every 5 years	Section 7
<input type="checkbox"/> Consult RCO on proposed compatibility uses	Section 7
<input type="checkbox"/> Comply with income generation requirements	Section 7
<input type="checkbox"/> Contact RCO if your future development or restoration plans are behind schedule	Section 7

Section 2

Eligible Projects and Costs

In this section, you'll learn about:

- ✓ The definition of real property
- ✓ Eligible projects
- ✓ Ineligible projects
- ✓ Other eligibility requirements

Eligible Projects

An acquisition grant from RCO may be used to buy real property for a variety of outdoor recreation, habitat conservation, and salmon recovery purposes. Real property is defined as land, crops, timber, mineral and water rights, land improvements, and structures and appurtenances to them, excluding movable machinery and equipment.

In general, RCO grants may be used to buy real property in several ways. Grants can be used to buy the land itself, called fee title acquisitions, or to buy an interest in the land, such as an easement, called less than fee title acquisitions.

The organization that will hold title to the real property interest must be a party in the RCO project agreement, which is the contract between RCO and the grant recipient, as either a project sponsor or secondary sponsor. All project sponsors and secondary sponsors must be eligible to receive grants in the specific RCO grant program assisting with the project.

Fee Title Acquisitions

Fee title acquisition includes the purchase of land and improvements. Fee acquisitions also may include purchase of existing encumbrances or other rights on the property held by third parties such as mineral rights or water rights that will support the protection of the property for public purposes.

Deeds

A deed is the legal document that transfers or conveys title to a property and is recorded with the county auditor's office. Eligible types of deeds are statutory warranty, special warranty, quit claim, or bargain and sale deed. Other types of deeds may be eligible on a case-by-case basis. Consult RCO if the type of deed proposed for acquisition differs from the types listed here.

A statutory warranty deed (or "general warranty deed") is the most protective type of deed and RCO's preferred type of conveyance for property. The statutory warranty deed binds the seller to the chain of title back to the origin of the property including all covenants and encumbrances on the title.

A special warranty deed is a less protective form of property conveyance for the project sponsor and RCO. The seller conveys the property with only the warranty that he/she owns the property and warrants the encumbrances placed on the property during his/her period of ownership. It does not warrant the chain of title before the seller's ownership period. Special warranty deeds are frequently used by executors and trustees.

A bargain and sale deed warrants only that the seller holds title to the property, but not the condition of the title and any covenants or encumbrances on the property. This type of deed is used frequently for land donations and foreclosures.

A quit claim deed is the least protective type of deed. It conveys the property without any warranty as to the seller's interest in the property or any of the covenants or encumbrances. Quit claim deeds may be used to transfer property between family members or cure defects in the title or for other transactions.

Quit claims deeds also often are used for rail banking projects. Certain rail corridors acquired with reversionary clauses are eligible with the understanding that should the property be rescinded, it would not be considered a conversion of use (see "Manual 7: Funded Projects").

Deed of Right

To protect the State of Washington's investment in the land acquired, RCO requires the project sponsor to record a Deed of Right on the title of the property. The Deed of Right Deed of Right conveys to the people of the State of Washington the rights to preserve, protect, and/or use the property for public purposes consistent with the grant program

and the project agreement in perpetuity, except in the Firearms and Archery Range Recreation program³.

Templates for the Deed of Right are in Appendices A-C and vary by the type of project. RCO will draft the Deed of Right based upon the information provided by the project sponsor. RCO will then provide a signed Deed of Right to the project sponsor for its signature. The project sponsor records the Deed of Right with the county auditor. The county auditor sends the original recorded document to RCO. RCO will provide a copy of the recorded Deed of Right to the project sponsor once it is received back from the county auditor. RCO will not reimburse a sponsor for acquisition costs until the Deed of Right is recorded.

A map is a required exhibit in each Deed of Right. The map must identify the property as described in the legal description and clearly outline the property boundary. The map also must identify the RCO project number, sponsor name, date the map was prepared, adjoining streets and roads, north arrow, and scale. The map background may be shaded or aerial photography but must be clear enough to be copied in black and white. See Section 6 and information on *Property Boundary Map Requirements* for more information about project mapping requirements.

The Deed of Right must be recorded before requesting reimbursement for the land costs, unless RCO will be depositing funds directly into the escrow account. If the Deed of Right is recorded after closing, RCO may request an updated final title report or endorsement to the title insurance policy to ensure no new encumbrances have been placed on the property before the filing of the Deed of Right.

Less than Fee Title Acquisitions

Less than fee title acquisition includes the purchase of a lease, easement (road, right-of-way, trail, conservation, agricultural, etc.), other property rights (development, mineral, timber, water, etc.), or a reserve interest deed. A reserve interest deed conveys all rights to a property except those rights specifically reserved by the seller.

The holder of the easement or lease has control of specific property rights, but does not own the land. Acquiring less than fee title property rights can be an appropriate strategy for some acquisition projects.

Draft legal documents (e.g., leases, easements, and assignment of rights) must be pre-approved by RCO. Provide adequate time for RCO to review, which may include

³ See Manual 11 for details on long-term obligations in Firearms and Archery Range Recreation grant program

consultation with the Attorney General's Office, your draft documents. Consult your grant manager to ensure adequate time for review.

The minimum interest length for a project acquiring a less than fee title acquisition differs depending upon the grant program as follows:

Minimum Interest Length for Less Than Fee Acquisitions	
Grant Program	Interest Length
Land and Water Conservation Fund (Easements only, leases are not eligible in this program)	Perpetuity
Salmon Recovery Grants (Easements only, leases are not eligible in this program)	Perpetuity
Aquatic Lands Enhancement Account	At least 50 years
Boating Facilities Program	At least 50 years
Washington Wildlife and Recreation Program (except Farmland Preservation Program easements and Conservation Reserve and Enhancement Program leases)	At least 50 years
Nonhighway and Off-Road Vehicle Activities	At least 25 years
Washington Wildlife and Recreation Program's Farmland Preservation Program	At least 25 years
Washington Wildlife and Recreation Program's Riparian Protection Account Conservation Reserve and Enhancement Program lease extensions	At least 25 years
Youth Athletic Facilities	At least 20 years
Firearms and Archery Range Recreation	At least 10 years

All policies included in this manual apply to the acquisition of less than fee rights including appraisal and appraisal review requirements, hazardous substances certifications, filing an Assignment of Rights, and title insurance. The project sponsor is responsible to ensure that the appraisal accurately reflects the subject property and rights to be acquired. The hazardous substances certification requirement does not apply to agricultural conservation easements acquired in the Washington Wildlife and Recreation Program's Farmland Preservation Program.

Habitat and Salmon Recovery Conservation Easements

For the purchase of habitat and salmon recovery conservation easements, RCO has developed a model conservation easement outline intended to provide an overview of the required and optional provisions to be included. (See section below for details on agricultural conservation easements.) If a project sponsor chooses not to use the model easement, or to use only portions thereof, the sponsor must demonstrate that the easement language used addresses each applicable provision of the model easement and is consistent with the intent of each provision, with the appropriate grant program manual, and with the laws of the State of Washington. The complete model habitat and salmon recovery conservation easement template is located in Appendix D.

Agricultural Conservation Easements

For the purchase of agricultural conservation easements in the **Washington Wildlife and Recreation Program's Farmland Preservation Program**, the RCO has developed a model agricultural conservation easement with specific provisions required. If a sponsor chooses not to use the model easement, or to use only portions thereof, the sponsor must demonstrate that the easement language used addresses each applicable provision of the model easement and is consistent with the intent of each provision, with the Farmland Preservation Program manual, and with the laws of the State of Washington. The complete model agricultural conservation easement templates are in Appendix E. See "Manual 10f: Washington Wildlife and Recreation Program, Farmland Preservation Program" for details on the model agricultural conservation easement.

Easement Requirements

Baseline Inventory

A baseline inventory is required for all habitat, salmon recovery, and agricultural conservation easements acquired with RCO funds. A baseline inventory records and characterizes the environmental aspects of the property at the time of the easement acquisition. The inventory provides the basis for future easement monitoring and, if necessary, enforcement. See Appendix F for baseline inventory requirements.

The baseline inventory must be prepared before closing and signed by the landowner and easement holder at closing. In the event of poor seasonal conditions for documenting all conservation values, an interim baseline with a completion schedule must be signed at closing. If the baseline has been completed and a significant amount of time has elapsed before the easement is transferred, it should be reviewed and possibly updated before closing. (Sponsors should consult Internal Revenue Service regulations on the timing of a property's conditions at the time of any gift.)

Easement Compliance

The model conservation and agricultural conservation easement templates require that each easement include a provision to provide access to the grantee (RCO's project sponsor) to conduct a general inspection of the easement area and to monitor compliance with the easement terms. RCO recommends a project sponsor conduct easement monitoring at least annually. Project sponsors must submit an easement monitoring report to RCO at least once every five years⁴.

⁴ Recreation and Conservation Funding Board Resolution 2010-34

Trail and Access Easements

Trail easements may be appropriate for trail-related projects such as trail corridors. Access easements may be necessary to secure legal or public access to a property or for construction purposes. (Temporary construction easements are not covered under this policy.) Trail and access easements must include:

- A surveyed legal description and map;
- Statutory language necessary to convey real property interests in Washington State;
- Statement of duration;
- Statement of purpose;
- Clear description of the rights that are being conveyed;
- Provide right to prevent any activity or use of the property that is inconsistent with the purpose of the trail/access easement;
- Maintenance clause; and
- An Assignment of Rights to the State of Washington through RCO or include the Assignment of Rights language directly in the easement.

Lease Requirements

The following terms are required for any lease acquisition:

- The lease may not be revoked by either party signatory to the agreement (or "revocable at will" by the signatories). If the lease is revoked, the project sponsor will need to mitigate for the lost lease per RCO's conversion policy in "Manual 7: Funded Projects."
- The lease value must be determined by an appraisal and appraisal review that meets RCO guidelines as described in this manual.
- Payment of the lease must be in a lump sum at the start of the lease, not over a period of years, and paid within the active period of the RCO project agreement unless payments have been made under an approved waiver of retroactivity.
- The purchase of a lease is not eligible in the **Salmon Recovery Grants or Land and Water Conservation Fund** programs.

Assignment of Rights

Project sponsors file an Assignment of Rights for all easements or leases being acquired unless otherwise noted in this manual. An Assignment of Rights ensures RCO has certain rights for access and stewardship of the property. Easements acquired in the **Washington Wildlife and Recreation Program's Farmland Preservation Program** do not require an Assignment of Right as the farmland easement template incorporates the necessary provisions.

The Assignment of Rights is intended to secure the public's interest in the easement or lease. To accomplish this, the Assignment of Rights does four things.

1. It commits the sponsor holding the easement or lease to monitor and enforce the terms of the easement or lease.
2. It gives RCO certain rights, which are co-held with the sponsor, for access to the property covered by the easement or lease.
3. It indemnifies the state with respect to the acts or omissions of the landowner and sponsor on the property.
4. It requires the sponsor to consult with RCO for any amendment of the easement or lease, or conversion of the land to another use.

Collectively, the Assignment of Rights ensures that RCO has the legal ability to act if the sponsor fails to manage or defend the easement or lease.

The template for the Assignment of Rights is in Appendix G. RCO will draft the Assignment of Rights based upon the information provided by the project sponsor. RCO will then provide a signed Assignment of Rights to the project sponsor for its signature. The project sponsor records the Assignment of Rights with the county auditor. The county auditor sends the original recorded document to RCO. RCO will provide a copy of the recorded Assignment of Rights to the project sponsor once it is received back from the county auditor. RCO will not reimburse a sponsor for acquisition costs until the Assignment of Rights is recorded.

An alternative to recording an Assignment of Rights is to incorporate the required language from the Assignment of Rights directly into the easement or lease document, thereby eliminating the need to record a separate document with the county auditor's office. When the Assignment of Rights is incorporated directly into the easement or lease, RCO becomes a third party beneficiary to the easement and must sign the easement or lease document. The easement or lease language will depend upon the situation. Project sponsors must submit the draft language to RCO for approval before executing the easement or lease.

Acquisition of Property for Mitigation

RCO funds may be used to buy land required by a mitigation plan when the mitigation is a requirement of a funded RCO project. For example, a new wetland may be required as mitigation for development of an athletic field on an existing wetland area, which may involve acquiring the wetland property.

When mitigation is required for development of an RCO funded project, a portion of the RCO grant may be used to buy and develop the mitigation land. The maximum amount of grant funding allowed for the mitigation (including purchase of the land and the construction costs) is 25 percent of the total construction costs of the RCO funded project and associated administrative and engineering costs in the project agreement.

RCO encourages the purchase and development of mitigation land that serves multiple functions such as providing habitat and recreation at the site. Any mitigation property acquired must be included in the project agreement and included within the legal description of the recorded Deed of Right or Assignment of Rights, whichever is appropriate. Acquisitions specifically for mitigation purposes related to impacts from other projects are not eligible for funding.

Phased Projects

Large acquisition projects can be complex, multi-year, multi-partner, and require extensive analysis, coordination, and implementation. A project sponsor should consider the potential complexity that large-scale or multi-million dollar projects may create, and should discuss phasing with RCO staff. Approval of any single phase is limited to that phase. No endorsement or approval is given or implied toward future phases. Progress on earlier phases may be considered by the funding boards when making decisions on current proposals by the applicant.

Phased acquisition projects are subject to the following criteria:

- Each phase must stand on its own merits as a viable project.
- Each phase must be submitted as a separate application.

Combination Projects

Combination projects involve real property acquisition in combination with other work such as a feasibility study, site planning, development, or restoration. Eligible combination projects vary by program. See applicable policy manuals for details.

Recreation and Conservation Funding Board Projects

To help ensure timely completion of combination projects, the Recreation and Conservation Funding Board has set progress policies related to combination projects. At least one month before the board considers approving funding for a combination grant, the project sponsor must secure the property by one of the following methods:

- Acquisition under the waiver of retroactivity policies and procedures in this manual.
- Have property in escrow pending grant approval. Closing must occur within 90 days after the funding meeting.
- Obtain an option or purchase and sale agreement on the property that extends past the board funding meeting. Execution of the option or agreement must occur within 90 days after this meeting.

If the acquisition is for a non-perpetual interest, applicants also must provide draft copies of all leases or easements to RCO for review. Execution of the leases or easements must occur within 90 days after the board funding meeting.

Salmon Recovery Funding Board Projects

To help ensure timely completion of combination projects, Salmon Recovery Funding Board projects must acquire properties within 18 months of the funding meeting.

Eligible Project Costs

Only eligible acquisition costs can be reimbursed by RCO and used by the project sponsor as a match for a grant⁵. Eligible acquisition project costs include administrative, incidental, and property costs. See "Manual 8: Reimbursement Manual" for more details on the reimbursement process.

Administrative Costs

Eligible project administrative costs include direct costs related to acquiring the property. Administrative costs are not eligible in the **Land and Water Conservation Fund** program. Eligible administrative costs in all other RCO grant programs include:

- Advertising

⁵ Recreation and Conservation Funding Board Resolution 2010-34

- Attorney fees – document review and drafting, clearing title, and other project related work.
- Billing preparation
- Communication
- Consultation
- Contract award
- Correspondence
- GIS mapping
- Meetings
- Negotiations
- Progress report preparation
- Project administration
- Public hearings
- Room rental
- Salaries and benefits
- Site visits
- Taxes (administrative goods and services)
- Travel costs to site and meetings

Administrative costs are limited to no more than 5 percent of the total costs of the property and incidental costs combined. RCO may approve a request to pay up to 10 percent administrative costs on a case-by-case basis. Increases above 10 percent require Recreation and Conservation Funding Board-Salmon Recovery Funding Board approval. To request an increase above 5 percent, the sponsor must provide a letter to RCO addressing the following:

- What amount of administrative cost is requested?
- Why is the additional administration costs needed?

- What has been accomplished to date? Provide specific information about the status of property negotiations.
- How will the additional administrative expenses impact the project scope? Will the original scope of work still be completed?
- What is the updated project completion timeline?

Property Costs

Direct costs for the purchase of real property or property rights are eligible. These include fee ownership and less than fee ownership costs.

Fee ownership costs include land, shore land, tideland, improvements, and structures. Fee acquisitions also may include purchase of existing encumbrances or other rights on the property held by third parties such as mineral rights or water rights that will further support the protection of the property for public purposes.

Less than fee ownership costs may include easements, leases, and separate property rights such as development, minerals, timber, or water rights, depending upon the specific program.

Property costs are established by conducting an appraisal to determine just compensation (i.e., market value) to the landowner. The appraised value must be confirmed by an independent appraisal review. See the section on "Appraisal and Appraisal Review" for more details on appraisal requirements.

Acquisition for More than the Appraised Value

RCO reimburses for property costs based upon the property's appraised value confirmed by an appraisal review. The appraised value is the just compensation for purchase of the property and the amount eligible for RCO grant funding and sponsor matching share. If negotiations with the property owner establish a higher price, the project sponsor may agree to pay a higher price and only seek reimbursement from RCO based upon the appraised market value.

In limited circumstances, RCO may approve paying up to 10 percent more than the appraised market value of the property. Approval to pay more than the appraised market value is not approval for additional grant funds or a grant cost increase. It allows RCO to reimburse at the higher approved purchase price. Approvals are made on individual properties, not for the entire scope of a project. Requests for reimbursement above 10 percent of the appraised market value must be approved by the Recreation and Conservation Funding Board or Salmon Recovery Funding Board.

A project sponsor must request approval to pay more than the appraised market value before closing on the property. RCO will not approve a request to pay above the appraised market value if the request is submitted to RCO after the project sponsor has closed on the property. The written request must address the following questions and include a copy of the appraisal, appraisal review, and draft purchase and sale agreement or option agreement.

1. What was the appraised value of the property?
2. What is the proposed purchase price?
3. Explain how the appraised value may not reflect the property's market value. Include adequate market data to substantiate the purchase price.
4. How far back in time or how far afield did the appraiser need to go to find comparable values? Were there adequate comparables readily available?
5. Did any of the comparables include other RCO or public or private conservation or park acquisitions?
6. Are there any proposed interim land uses on the property?
7. How will the additional property expense impact the project scope? Will the original scope of work still be completed even if a higher purchase price is approved?
8. Are there alternative properties within the project agreement that could be pursued or is this project unique in some way (e.g. specific park location, wildlife species nesting area on site, sensitive plant species on site, etc.)?

When considering whether to pay above the appraised market value, RCO considers both the negotiated price and appraised market value in establishing its reimbursement and grant amount.

If RCO denies approval to pay above the appraised market value, the project sponsor may pay the higher price at its own expense and the amount is not eligible for RCO funding or as sponsor match.

Incidental Costs

Incidental costs are those costs that are incurred when purchasing land or property rights such as conducting due diligence investigations and closing on the transaction. Once an incidental item has been completed, the final document (e.g., appraisal, environmental assessment, relocation plan, etc.) must be submitted along with the

invoice requesting reimbursement of the incidental cost item. Electronic documents are preferable.

Eligible incidental costs in every RCO acquisition project are:

- Appraisal and appraisal review – one per property
- Baseline documentation – conservation easements only
- Closing fees
- Fencing
- Environmental audits, chain of title reports, and site investigation such as test pits, test wells, and sample analysis (limited to 10 percent of the appraised market value of the property)
- Recording fees
- Taxes due at closing (compensating, excise, and pro rata taxes). Delinquent taxes owed on a property before the date acquired are eligible costs on a case-by-case basis with pre-approval from RCO.
- Title reports and insurance – extended title insurance may be approved on a case-by-case basis
- Wetland delineations

Other incidental costs that are eligible in an acquisition project are:

- Boundary line adjustments, lot line adjustments, and subdivision exemptions
- Cultural resources⁶ (survey, excavation, on-site monitoring, data recovery, and other costs)
- Demolition of ineligible structures
- Environmental audit recommendations that do not trigger formal cleanup action but will improve the condition and safety of the property such as debris removal, well decommissioning, non-hazardous (below Model Toxics Control Act cleanup levels) contaminated soil removal, and other recommended action items

⁶ Archeological and historical sites and artifacts, and traditional areas or items of religious, ceremonial, and social uses to tribes.

- Land survey (i.e., property boundaries). New legal surveys must be recorded with the county auditor's office on the property title if the property is successfully acquired with RCO grant funds.
- Noxious weed control (initial control, up to \$125 per acre or \$2,500 per property for properties less than 20 acres.)
- Relocation for eligible displaced tenants only when the property is acquired from a willing seller (including administration). See the Section 4 Acquisition Procedures and information on relocation for specific requirements and eligible costs.
- Relocation for eligible displaced residents and tenants when the property is acquired through condemnation (including administration). See the section below on "Relocation" for specific requirements and eligible costs.
- Signs – boundary, entrance, notices, rules, etc.
- Stewardship Plans – salmon recovery grants, Washington Wildlife and Recreation Program's riparian and farmland projects only
- Incidental costs are limited in the **Land and Water Conservation Fund** program and only include:
- Relocation and relocation administration allowable under the Uniform Relocation Assistance and Real Property Acquisition Policies, P.L. 94-646.
- Cultural resources (survey, excavation, on-site monitoring, data recovery, and other costs)
- National Environmental Policy Act compliance (e.g., hazardous substances review, wetland delineations, biological surveys, etc)

Pre-Agreement Costs

Pre-agreement costs are project costs incurred before fully executing a project agreement. Some administrative and incidental costs are eligible pre-agreement costs if incurred up to three years before the start date of the project agreement.

Pre-agreement costs are limited to:

- Administration costs
- Incidental costs limited to:

- Appraisal and appraisal review
- Baseline documentation – conservation easements only
- Boundary line adjustments, lot line adjustments, and subdivision exemptions
- Cultural resources⁷ (survey, excavation, on-site monitoring, data recovery, and other costs)
- Environmental audits as described in this manual
- Land survey (i.e., property boundaries). New legal surveys must be recorded with the county auditor's office on the property title if the property is successfully acquired with RCO grant funds.
- Preliminary title reports
- Relocation administration
- Stewardship Plans – salmon recovery grants, Washington Wildlife and Recreation Program's riparian and farmland projects only
- Wetland delineations

All pre-agreement costs incurred must adhere to the requirements in this manual for the costs to be eligible for RCO funding or used as sponsor match. For example, project sponsors must ensure that incidental items such as appraisals, cultural resources review, and relocation costs meet the policies in this manual.

Buying Land Without a Signed RCO Project Agreement (Waiver of Retroactivity)

In most situations, RCO will reimburse only for expenses incurred after the project agreement is executed fully (except for eligible pre-agreement costs). However, a project sponsor may get advance approval in writing from RCO to purchase a property and preserve eligibility of land acquisition and other incidental costs incurred before the project agreement is executed. The approval is called a "waiver of retroactivity," which waives the prohibition to reimburse costs incurred before the project agreement.⁸ All acquisition costs that would be eligible during the project agreement period become

⁷ Archeological and historical sites and artifacts, and traditional areas or items of religious, ceremonial, and social uses to tribes.

⁸ Washington Administrative Code 286-13-085

eligible for reimbursement when a waiver of retroactivity is issued (not just pre-agreement costs).

A project sponsor must request a waiver of retroactivity before acquiring property that will be the subject of a new grant application, including property that will be used to satisfy the sponsor's matching share. One waiver of retroactivity is issued per property and may be used by any eligible project sponsor in the grant program. The waiver may be requested only when immediate action is necessary and the grant won't be awarded in time. When a waiver is approved, it allows the project sponsor to acquire the property in advance of a signed project agreement without forfeiting eligibility to receive grant funding for the project. Approval of a waiver does not guarantee funding. When approved, a waiver is good for two consecutive grant cycles from the date of acquisition depending upon the grant program.

To request a waiver of retroactivity, a project sponsor submits a written request with a justification regarding the critical need to purchase property; location map; parcel map; and preliminary title report. RCO may request additional documentation for review of the request. The project sponsor also may submit the appraisal, review appraisal, and other incidental documents for RCO review, if available. The request must be submitted before closing on the property, preferably 30 days in advance.

In the **Land and Water Conservation Fund** program, RCO must obtain approval from the National Park Service before issuing a waiver of retroactivity so sufficient time is needed for federal and state approval. See more details in "Manual 15: Land and Water Conservation Fund."

Project sponsors compelled to acquire property before securing a project agreement, do so at their own risk. Be aware, if a grant is not awarded, RCO will not reimburse any expenses. Should a grant subsequently be awarded to acquire the property, all applicable policies in this manual must be met to receive reimbursement or to use the acquisition costs as match toward a grant award. For example, the title must be free of encumbrances that limit the value or uses on the property disproportionately to the public benefit, relocation and cultural resource review must be completed, if appropriate, and the appraisal must be conducted to the appropriate standards.

In addition, costs associated with less than fee title property rights must meet the terms as outlined in this manual. For example, a conservation easement or lease must be assignable to RCO. Project sponsors considering a less than fee title acquisition and planning to seek RCO grant funding should consult RCO about less than fee title requirements.

Ineligible Projects

The funding boards' program manuals contain specific information about ineligible land acquisition elements. Ineligible land acquisitions are not eligible for grant funding and as such cannot be used to fulfill a sponsor's match to a funded project. The following is meant to provide broad guidance in this area. Grants may not be used to acquire:

- Land already owned by the sponsor, unless the property meets the eligibility requirements described in the "Acquisition of Existing Public Land" section or the "Buying Land before an RCO Project Agreement is Signed" section in this manual.
- Land to be used in support of indoor activities. This applies equally to existing buildings and undeveloped land where major indoor facilities will be constructed. Exceptions vary by grant program. See program related manuals for a list of indoor facilities that may be allowed in the program. Some examples of eligible indoor facilities include:
 - Indoor shooting ranges in the Firearms and Archery Range Recreation program.
 - Indoor swimming pools or ice skating rinks in the Land and Water Conservation Fund program.
 - Indoor facilities that support the outdoor uses of the land such as restrooms, storage facilities, and maintenance sheds.
- Land with museums, or sites to be used for museums.
- Land to be used primarily for semi-professional and professional activities, such as arts and athletics.
- Land with sufficient revenue producing potential to finance the project's cost.
- Land where exclusive use privileges will be leased, such as boat moorage or storage or a membership golf course.
- Land to be used solely for hatchery style fish production.
- Established outdoor recreation areas developed under ownership or management of a public agency.
- Land to mitigate the impact of a non-RCO assisted project, project element, or action of the project sponsor.

- Purchase of development rights for transfer to a receiving property.⁹
- Land that is contaminated per Model Toxics Control Act unless it meets one of the exceptions in the Hazardous Substances section in this manual.¹⁰
- Land donated by a third party in lieu of mitigation fees, permit fees, and impact fees required for a development.¹¹ See the Land Donations section in this manual for more details.
- Acquisition of property through condemnation per Chapter 8.26 Revised Code of Washington or the threat of condemnation is prohibited in the salmon recovery grant program¹² and the Washington Wildlife and Recreation Program¹³.

Acquisition of Existing Public Property

In general, property that already is under public ownership or management is not eligible for RCO grant funding. (See the section "Ineligible Projects.") Land held by a tribal government is not considered public land. There are two exceptions to this policy that allows existing public property to be eligible for RCO grant funding.

1. The property was acquired under a waiver of retroactivity. See the section on "Buying Land Without a Signed RCO Project Agreement "; or
2. The following three circumstances are satisfied:
 - a. State law requires that the agency selling the land must receive compensation, and
 - b. The land was not originally acquired by the selling agency for habitat conservation (for habitat conservation proposals), salmon habitat recovery (for salmon habitat recovery proposals), or recreation use (for outdoor recreation proposals), and
 - c. The land has never been publicly managed for habitat conservation (for habitat conservation proposals), salmon habitat recovery (for salmon habitat recovery proposals), or recreation (for outdoor recreation proposals).

⁹ Recreation and Conservation Funding Board Resolution 2010-34

¹⁰ Washington Administrative Code 420-12-090

¹¹ Washington Administrative Code 420-12-090

¹² Washington Administrative Code 420-12-090

¹³ Revised Code of Washington 79A.15.090

State law¹⁴ provides for the transfer of land from one public body to another without the requirement of full value compensation. Therefore, a project sponsor must provide other statutory evidence that the selling agency must receive compensation for the property. For example, state law¹⁵ requires full value compensation of land when a local government transfers property from one department to another, and another state law¹⁶ requires irrigation districts to receive reasonable market value in certain transactions.

For projects in the **Land and Water Conservation Fund**, the property must be acquired under a waiver of retroactivity and meet only criteria 2(a) and 2(b) above.

Contract or Installment Sales

RCO will not financially assist property bought on a contract or installment basis if the contract period exceeds the project agreement period. Full payment must be made to the seller within the project agreement period. This ensures that the sponsor:

- Has clear ownership of the property, and
- Can meet the Deed of Right requirements, that is, convey use of the property to the state forever, for outdoor recreation, salmon recovery, or habitat conservation purposes.

RCO recognizes that this may be an obstacle when buying from an owner who, for tax reasons, wants to sell on a multi-year installment or contract basis only. Private non-profit land trusts may offer a solution to this problem for state or local agencies by acting as an intermediary to the transaction. For example, the land trust may contract to purchase the property on a seller-financed basis with note payments scheduled according to the seller's tax needs. The land trust then sells the property to the sponsoring agency on a lump sum basis, while retaining liability for the note payments.

If the seller so requests, the land trust may provide collateral in several ways other than using the property itself. For example, the trust could arrange for a letter of credit in favor of the seller to secure the note. An alternative is for the trust to purchase a certificate of deposit, which can be assigned to the seller for security purposes. Normally, either of these cash collateral methods of security is acceptable to sellers. Both would result in the acquisition of the land free of purchase money encumbrances.

These procedures are suggested only to broaden the options of project sponsors as they seek to acquire property with RCO funds.

¹⁴ Chapter 39.33 Revised Code of Washington

¹⁵ Revised Code of Washington 43.09.210

¹⁶ Revised Code of Washington 87.03.136

Ineligible Project Sponsors

Eligible project sponsors vary by grant program except federal agencies are not eligible for land acquisition grants. Federal agencies may receive title to lands acquired with Salmon Recovery Funding Board grants funds in certain circumstances.¹⁷ (Consult “Manual 18: Salmon Recovery Grants” on specific criteria related to transferring land to a federal entity in that program.

Ineligible Costs

RCO funds and sponsor matching money may not be used for costs peripheral to buying land or property rights. Thus, ineligible costs include, but are not limited to, applying for any grant funding, option payments, earnest money, landowner liens and lien fees, annual property taxes beyond the pro rata taxes due at closing, indirect costs, fees for feasibility studies, and court costs.

Other Eligibility Requirements

Public Access

In most cases, regardless of whether the property is developed, all property acquired in fee title with RCO grants must be available for public use. Public use means that the general public has regular access and use of property acquired with RCO grants. Where appropriate, public use may be limited to non-motorized access only or as allowed by the grant program from which funding was derived or as defined in the project agreement.

Providing public use to the site does not mean that developed facilities must be provided. Project sponsors must immediately dedicate lands acquired with RCO grants to public use even in the period between acquisition and any planned development or restoration. Use of undeveloped or partially developed properties may be restricted; however, total exclusion of the general public must be avoided. RCO may approve a request to restrict the public’s use of a property to protect sensitive natural areas, salmon habitat recovery areas, critical habitats, or cultural resources.

Legal Access

In most cases, all property acquired in fee title with RCO grant assistance must have direct legal access to the property. Legal access is important for property management, public access, and RCO compliance and inspection purposes.

¹⁷ Revised Code of Washington 77.85.130(7)

For all RCO acquisition projects, the legal access requirements are as follows¹⁸:

1. **Legal Access.** Public access requirements in this manual include legal access to the land. If RCO waives the requirement to provide public access on a fee title acquisition, the property must have direct legal access for the property to be managed by the project sponsor and RCO to conduct its compliance inspections.
 - a. Legal access to a property means the project sponsor has the legal, insurable right and means to reach the property year-round. For properties surrounded by water (i.e., islands), legal access must be obtained across shore lands, tidelands, or bed lands as appropriate, and
 - b. Legal access must provide sufficient access rights for RCO to monitor compliance for which the grant funding was provided and for the project sponsor to maintain the property.
2. **Informal Access.** If the project sponsor cannot obtain legal access rights to the property as above, informal access may be pre-approved by RCO under the following three conditions:
 - a. Informal access route:
 - i. The project sponsor owns the adjacent property and can access the RCO funded property from the project sponsor's existing property holding; or
 - ii. Access to the property can be accomplished through existing public land; and
 - b. RCO will be able to conduct compliance inspections with minimal burden to get to the property; and
 - c. The appraised value reflects a lack of legal access to the property.
3. **No Access.** Approval to purchase property with no legal access or informal access may be approved in limited circumstances. If the project sponsor cannot obtain legal access or demonstrate informal access by one of the above means, the RCO may approve acquisition of property without any means of access on a case-by-case basis under the following three conditions:
 - a. All reasonable alternatives have been exhausted; and

¹⁸ Recreation and Conservation Funding Board Resolution 2010-34

- b. The property to be acquired is critical to implementation of the project agreement, and
- c. The appraised value reflects a lack of legal access to the property.

Existing Structures

All structures on property acquired with RCO grants must be removed or demolished unless RCO determines the structure is allowed by program policy and will support the intended uses at the site. Allowable structures vary by program. Consult the appropriate program policy manual for guidance on allowable structures. New proposed uses of structures must be reviewed by RCO per the requirements in "Manual 7: Funded Projects."

Before demolition or removal of any structure or any ground disturbing activity, a project sponsor must comply with cultural resources review requirements in this manual under the "Cultural Resources Review" section.

If a project sponsor wishes to retain a structure that exists on the property, the intended use of the structure must be clearly identified in the grant application. RCO then will determine whether the structure is eligible to be retained per the specific grant program policies. If allowed, discussion of the structure's purpose and use must be included in the evaluation process.

If a project sponsor wishes to retain a structure that is not eligible for RCO grant funding, then the structure and associated land and support facilities must be excluded from the grant proposal. See the section on "Project Scoping" for more details on how to exclude areas from the scope of an RCO project.

Land Donations

Property acquired at less than its appraised market value is eligible for RCO grant funding as a land donation from the seller. The land donated must meet program eligibility requirements. The land donation transaction must follow the Acquisition Procedures section in this manual and provide all the required documentation including appraisal, appraisal review, hazardous substances certification, title insurance, etc. Costs associated with acquiring donations of land are eligible grant expenses.

If the property is acquired at less than the appraised market value, the project sponsor must provide a Purchase and Sale Agreement or obtain a statement signed by the landowner acknowledging that before the sale the owner:

- Was provided a statement of just compensation which identifies the appraised value of the property including land, improvements, and relocation, and

- Is donating all or a portion of the value of the property voluntarily, as an act of free will.
- The landowner donation statement must be provided at the time the project sponsor requests reimbursement from RCO.

In general, donations of land in lieu of mitigation fees permit fees, and impact fees, or dedication of land as a requirement of a permit approval for third party related development impacts are not eligible donations of land for RCO grant purposes and may not be used as sponsor match. Land value in excess of the land donation required by the mitigation, permit, or impact fee requirement is eligible as sponsor match.

Interim Land Uses

Sometimes a landowner or lessee may wish to retain certain uses on a property as part of a negotiation with a project sponsor to acquire a property. Certain uses may be allowable with prior RCO approval. A project sponsor must request approval for an interim land use before closing on the property and taking ownership.

RCO may approve certain land uses on an interim basis to allow the landowner or lessee an opportunity to continue use of the land as described below.

Existing Second Party Use

A secondary party use is a use that was occurring on the land before the property was acquired by the project sponsor and the landowner or lessee wishes to continue that use after the property is acquired with RCO grants. The secondary party may be the landowner who sold the property to the project sponsor or another party with existing rights.

RCO may approve a second party use when:

- The use is a *continuing* second party use. The use already is occurring on the land at the time the property is acquired;
- The use does not unreasonably limit public use or the achievement of the purpose of the RCO project agreement or RCO funding program;
- The second party's use will be phased out within three years of the date of acquisition. If the use will proceed longer than three years, it must be reviewed under the compatible use policy in this manual; and

- Use of any income derived from the second party use is consistent with the RCO income policy in "Manual 7: Funded Projects"¹⁹.

For **Land and Water Conservation Fund** projects only, RCO may withhold a percentage of the grant funds until the secondary party use ceases based upon an amount determined by the National Park Service.

Life Estates

A life estate is a real property interest in the form of a reservation on the deed which is held for the duration of a person's life. RCO may approve a life estate when:

The life estate does not unreasonably limit public use or achievement of the purpose of the RCO project agreement or RCO funding program;

- The life estate is for the owner(s) of the property only, not for successive generations;
- The impact of the reservation of the life estate is addressed in the valuation of the property. Appraisers must treat a life estate as an encumbrance; and
- The terms or covenants of the life estate have been reviewed and accepted by RCO²⁰.

Cultural Resources Review

The real property acquired through RCO funding is subject to Governor's Executive Order 05-05 (www.governor.wa.gov/execorders) or compliance with Section 106 of the National Historic Preservation Act. Both require review, analysis, and consultation with the Washington Department of Archaeology and Historic Preservation and affected Native American tribes for archaeological and cultural resources. RCO requires documented compliance with the executive order or preservation act, whichever is applicable to the project. RCO will issue a notice to proceed when appropriate documentation has been received. Cultural resources review is not required for projects funded in the **Washington Wildlife and Recreation Program's Farmland Preservation Program**.

"Cultural resources" means archeological and historical sites and artifacts; traditional areas; and items of religious, ceremonial, and social uses for tribes. The goal is to ensure that reasonable action is taken to avoid damage to those resources. The cost associated

¹⁹ Recreation and Conservation Funding Board Resolution 2010-34

²⁰ Recreation and Conservation Funding Board Resolution 2010-34

with cultural resources review is an eligible item for reimbursement in the project agreement.

Using materials from the grant application, RCO submits project information to the Department of Archaeology and Historic Preservation and affected Native American tribes to determine if the project has the potential to damage cultural resources and whether consultation will be required. Project sponsors may be asked to complete a cultural resources survey. The consultation must be completed before any ground disturbing activity begins including installing fences or signs, demolishing structures, or planting.

If archaeological or historic materials are discovered once ground disturbing activities have started, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification must be provided to the following:

- Concerned Native American tribes' cultural resources staff and cultural committees
- RCO
- Department of Archaeology and Historic Preservation

If human remains are discovered during ground disturbing activities, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification must be provided to the following in the most expeditious manner possible²¹:

- Concerned Native American tribes' cultural resources staff and cultural committees
- RCO
- Department of Archaeology and Historic Preservation
- County coroner
- Local law enforcement

Stewardship Plans

All **salmon recovery grant** acquisition projects funded by the Salmon Recovery Funding Board require a stewardship plan. A plan is necessary to ensure the project objectives are

²¹ Chapter 68.50 Revised Code of Washington

met and the site will be maintained and monitored for at least 10 years from the project agreement completion date. Consult "Manual 18: Salmon Recovery Grants," for specifics on what the stewardship plan must include.

Stewardship plans are also encouraged, but not required, for property acquired with grants from the **Washington Wildlife and Recreation Program's Riparian Protection Account and Farmland Preservation Program**. Consult "Manual 10b: Washington Wildlife and Recreation Program Habitat Conservation Account and Riparian Protection Account" or "Manual 10f: Farmland Preservation Program" for specifics on what the stewardship plan must include.

Section 3

Application Requirements

In this section you'll learn about

- ✓ Project scoping
- ✓ Landowner acknowledgement of application
- ✓ Local jurisdiction review

Project Scoping

When applying for grant money, the project sponsor should identify clearly the intended uses of the property to ensure those uses are eligible or compatible with the RCO funding. If the project sponsor wishes to use portions of the property for ineligible grant activities, such as keeping ineligible structures or a compatible use as described in Section 7 of this manual, the project sponsor must consult with RCO when applying for grant funds or before acquisition.

RCO can work with the project sponsor to exclude areas intended for ineligible grant activities from its Deed of Right or Assignment of Right and the project agreement. The area to be excluded must be delineated clearly by a survey or legal description and valued in the appraisal process. The Deed of Right must include a legal description of the area that will remain in the RCO funded portion of the project.

The appraised value of the area excluded must be established either through a separate appraisal, appraisal update, or by calculating the property value with the existing appraisal information. Consult RCO about negotiating the area to be excluded and the appropriate method for valuing the property.

Landowner Acknowledgement of Application

As part of any grant application for acquisition of real property, the project sponsor must demonstrate that the landowner is aware of the project sponsor's interest in purchasing his/her property. For Salmon Recovery Funding Board projects, this requirement must be accomplished by completing option one below for each parcel proposed to be acquired. For Recreation and Conservation Funding Board projects, this requirement must be accomplished by completing one of the four options below for each parcel proposed to

be acquired. In either case, for stream reach or landscape scale acquisition projects with multiple properties, include at a minimum, the landowner acknowledgement for the top three priority parcels.²²

- Option 1 – Submit a Landowner Acknowledgement Form as Appendix H of this manual.
- Option 2 – Submit evidence of some other previous communication instead of the form. Evidence (e.g., letter, option agreement, or purchase and sale agreement) must demonstrate that the current landowner was contacted and has been made aware the project sponsor is interested in purchasing the property.
- Option 3 – Submit a copy of a letter to the current landowner that notifies him/her that the project sponsor is interested in acquiring the property and is submitting a grant application to the Recreation and Conservation Funding Board.
- Option 4 – Submit an affidavit from the project sponsor's chief executive to RCO that states the landowner has been contacted but wishes to remain anonymous. An affidavit is a written statement of facts made by the chief executive officer under an oath or affirmation administered by a notary of the public, court clerk, recording officer, or other authorized public officer.

Landowner acknowledgement documentation may be stored in RCO's grant application online database (PRISM) and restricted from public view or within the project file at the RCO. However, such information would be subject to disclosure should a public disclosure request be filed. See the section on "Public Disclosure Rules" in Section 7 for more information.

Local Jurisdiction Review (Washington Wildlife and Recreation Projects Only)

Before applying for a grant to acquire property in the Washington Wildlife and Recreation Program, project sponsors must give the county commission or city council with jurisdiction over the project area an opportunity to review the grant application.²³ The county commission or city council may, at its discretion, submit a letter to the Recreation and Conservation Funding Board stating its support or opposition to the project. The Recreation and Conservation Funding Board shall make the letters received

²² Recreation and Conservation Funding Board Resolution 2010-34

²³ Revised Code of Washington 79A.15.110

available to the Governor and the Legislature when submitting its prioritized project list as part of RCO's biennial capital budget request.

To meet this requirement, the project sponsor must provide each member of the county commission or city council, as appropriate, the following information before the grant application technical completion deadline. A copy of the packet must be sent to RCO as well.

1. A cover letter referencing Revised Code of Washington 79A.15.110 and the option for the county commission or county commission to send a letter to the Recreation and Conservation Funding Board stating its position on the project.
2. The project description as it will be submitted with the grant application.
3. A location map and parcel map of the proposed project.
4. The geographic envelope of the proposed project, if the project sponsor is pursuing a multi-site acquisition strategy.

A local government acquiring property within its own political boundaries meets this requirement by submitting the adopted resolution that is required with the RCO grant application. A local government proposing to purchase property outside its jurisdiction (e.g., a city acquiring property outside its city limits or a county acquiring property within a city's limits) must comply with the local jurisdiction review requirement.

Section 4

Acquisition Procedures

In this section, you'll learn about:

- ✓ Acquisition procedures
- ✓ Relocation procedures

Acquisition Procedures

All project sponsors of all RCO acquisition projects must follow the acquisition procedures in Revised Code of Washington 8.26.180 and Chapter 468-100 Washington Administrative Code. These procedures apply to all RCO grant funded acquisition projects, both state and federal funding sources, regardless of whether there is relocation involved in the transaction and regardless of the type of project sponsor. Below is a step-by-step process that is intended to guide project sponsors in meeting the required procedures. If a project sponsor has a different process, contact RCO to ensure compliance with the requirements.

Project sponsors must follow these procedures:

1. Contact the landowner to learn if the property is for sale or if they are willing to entertain an offer.
2. In writing, inform the landowner that they are not compelled to sell the property to the agency, rather this is a voluntary transaction and relocation assistance will be provided for tenants that are eligible displaced person in accordance with the Uniform Relocation Act²⁴. The value of the property or the purchase price is not discussed at this time. The parties may discuss how the property will be valued and how they will determine a purchase price. A sample notice is available in Appendix I. Provide a copy of the notice to RCO.

²⁴ Chapter 8.26 Revised Code of Washington

3. If applicable, consult with an approved relocation agent and determine the eligibility of any relocation assistance for any tenants. See the section below on relocation requirements.
4. If applicable, provide the landowner a written notice describing the relocation program.
5. Obtain an appraisal of the property and provide the landowner an opportunity to be present during the appraiser's inspection.
6. Obtain a review of the appraisal to confirm the value of record.
7. Present the landowner with a notice of just compensation and relocation, which informs the landowner of the appraised market value of the property and offers eligible tenant relocation assistance, if applicable. A sample notice is available in Appendix J. Provide a copy of the notice to RCO.
8. Negotiate an option agreement or purchase and sale agreement with the landowner. If an option agreement or purchase and sale agreement is secured before execution of an RCO project agreement, the agreement should:
 - a. Be based upon the notice of just compensation value established by an appraisal and confirmed by an appraisal review;
 - b. Not commit the project sponsor to acquire the property;
 - c. Stipulate that any cost of securing an option is to be applied to the purchase price (This ensures that the cost of the option is an eligible RCO grant expense later.)
 - d. Be valid at least 40 days beyond the date an RCO Project Agreement is issued.
9. Conduct any due diligence proceedings (e.g., title review, hazardous substances review, etc.), ensure compliance with RCO policies, and obtain RCO approval for any draft legal documents.
10. Acquire the property and record conveyance documents (e.g., deed, easement, lease) and a RCO Deed of Right or Assignment of Right, as applicable, with the county auditor's office.

Relocation Procedures

Federal and state laws require RCO to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, commonly referred to as the Uniform Relocation Act, or URA on all federal and state funded projects.²⁵

Local agencies (e.g., cities, counties, and special purpose districts) with powers of eminent domain may opt out²⁶ of the relocation requirements if the project does not involve federal funds. A local agency requesting to opt out of the relocation requirements should inform RCO of its exemption status before closing on the acquisition. All other RCO project sponsors must comply with the relocation requirements.

An RCO funded acquisition that involves the purchase of property from a willing seller is considered a voluntary transaction.²⁷ The project sponsor must provide the property owner written assurance that the property will not be acquired through condemnation at the beginning of any negotiation. As the acquisition is a voluntary transaction, the seller is not eligible for relocation but any tenant that qualifies as a displaced person is eligible for relocation per an approved relocation plan. A tenant is a person who has the temporary use and occupancy of real property owned by another.²⁸ A tenant may have a residential or business use on the property.

When a project sponsor must acquire property through condemnation and it is eligible in the RCO grant program, RCO will reimburse for residential and tenant relocation expenses for eligible displaced people per an approved relocation plan. Acquisition of property through condemnation is prohibited in the **salmon recovery grants program** and the **Washington Wildlife and Recreation Program**.

The project sponsor must conduct administrative services needed to comply with the Uniform Relocation Act,²⁹ if there are eligible displaced people associated with the property. These services may include preparation of a relocation plan, relocation cost estimate, and relocation services. RCO must agree in advance on the qualifications of the relocation agent to perform the work. The relocation agent must be approved by the lead agency, Washington Department of Transportation. The project sponsor may need to contract with another state agency, such as the Department of Transportation, to perform these services. When contracting for relocation services, be sure to instruct the

²⁵ Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act, P. Law. 100-17-1987; and chapter 8.26 Revised Code of Washington

²⁶ Revised Code of Washington 8.26.010(2)

²⁷ Washington Administrative Code 468-100-101(2)(a).

²⁸ Washington Administrative Code 468-100-002

²⁹ Chapter 8.26 Revised Code of Washington

relocation agent as to whether the acquisition is a voluntary transaction (common for RCO funded projects) or being conducted through eminent domain authority (not common for RCO funded projects). Administrative costs and contracts to conduct relocation are eligible relocation expenses in an RCO grant.

For more information about relocation assistance or acceptable forms to be used in providing relocation assistance, contact the Department of Transportation's Real Estate Services Relocation Program at www.wsdot.wa.gov/realestate/.

Section 5

Appraisal Requirements

In this section, you'll learn about:

- ✓ Appraisal and review appraisal standards
- ✓ Appraiser qualifications
- ✓ Appraisal costs

Just Compensation

RCO determines just compensation to landowners based on appraisals and reviews of those appraisals. The project sponsor first contracts for an appraisal of the property to determine the market value of the property. Then the project sponsor contracts for an independent review of the appraisal to confirm the market value identified in the appraisal.

Appraisal and Review Appraisal Standards

There are two forms of acceptable appraisal and review appraisal standards depending upon the source of funding for the acquisition project. For projects funded with state money, the project sponsor must instruct the appraiser and review appraiser to use the standards set forth in the *Uniform Standards of Professional Appraisal Practice* (USPAP) publication. The appraised market value of the property must be a point value, rather than a value range. (Example: \$257,000 rather than \$240,000 to \$270,000).

For projects funded with federal funds (i.e., some **Salmon Recovery Grants** and all **Land and Water Conservation Fund** grants), the project sponsor must instruct the appraiser and review appraiser to use the standards set forth in the *Uniform Appraisal Standards for Federal Land Acquisitions* (UASFLA). In addition, projects in the Land and Water Conservation Fund must follow special appraisal instructions (see "Manual 15: Land and Water Conservation Fund"). When an acquisition project will receive funding from both state and federal sources, the project sponsor may apply the federal standards to the entire project.

Extraordinary Assumptions and Hypothetical Conditions

All appraisal reports include a statement of assumptions and limiting conditions. In addition, an appraisal may include extraordinary assumptions or hypothetical conditions upon which the appraiser based the market value of the property. Project sponsors should avoid the use of hypothetical conditions unless consistent with USPAP guidelines. If the appraiser uses extraordinary (special) assumptions or hypothetical conditions, the appraiser must clearly state these within the report and must provide a reasonable justification for using them. Additionally, the review appraiser must list all extraordinary assumptions and hypothetical conditions and comment on their reasonableness. If the findings are that the assumptions or conditions are not reasonable, the value of the land may not be supported. RCO may not accept the appraisal and require a new appraisal without unsupported assumptions and conditions.

RCO recommends that any extraordinary assumptions or hypothetical conditions (e.g., legal access, zoning, encumbrances, etc) provided to the appraiser first be reviewed by RCO for compliance with RCO policies and the project agreement. RCO reserves the right to require a project sponsor to update an appraisal or get a new appraisal, at the project sponsor's expense, if the appraised value of the property is subject to any extraordinary assumption or hypothetical conditions not previously reviewed and approved by RCO.

Encumbrances

When determining the property's market value, the appraiser and review appraiser must consider encumbrances and reservations that will be on the property as it is finally to be conveyed, which may be different than characterized on the preliminary title report. The project sponsor must provide the appraiser and review appraiser with the preliminary title report and the encumbrance documents. In addition, the project sponsor must inform the appraiser of any changes on title to be made up to closing, including encumbrances that will be cleared and any new encumbrances or reservations that are to be created (except for RCO's Deed of Right). RCO may require supplemental information or an appraisal update before reimbursement or the release of escrow funds if the original report does not reflect accurately the encumbrances in place at the time of conveyance.

Appraisal Report Formats

USPAP allows three formats for appraisal reports: self-contained, summary, and restricted. RCO accepts only self-contained and summary reports. Restricted use reports are not acceptable. In determining whether to obtain a self-contained or summary report, project sponsors should consult with the appraiser on the appropriate reporting method based upon the following criteria:

- **Self-Contained Appraisal Report:** Used if the appraisal problem involves partial land takes, acquisitions involving damages, conservation or other easements, complex appraisal issues, etc.
- **Summary Appraisal Report:** Used if the appraisal problem involves only “whole takes” of the subject property. In other words, use this report when non-complex acquisition of an entire parcel occurs with no partial takings or resulting damages to remaining properties.

Appraisal Shelf Life

State Funded Projects

Appraisals for state funded grant projects are considered valid for one year from the effective or valuation date of the appraisal. Sponsors must either purchase the property or have a signed “purchase and sale” agreement within one year of the effective date of the appraisal.

If the property is not acquired or a purchase and sale agreement is not secured within 12 months of the effective date of the appraisal, the project sponsor must obtain a new appraisal “statement” from the appraiser stating that land values have not changed and the appraised value is the same since the effective date of the appraisal. If the appraiser cannot or will not provide such a statement, the project sponsor must obtain an appraisal update (see below). Costs associated with the appraisal “statement” may be reimbursed by RCO. The shelf life of an appraisal for any state funded grant project may not exceed 18 months under any circumstances.

Federally Funded Projects

Appraisals for federally funded grant projects are valid for 12 months.

Appraisal Updates

An appraisal update is a new appraisal assignment to the original appraiser that incorporates information and analysis from the original report to get a more current market value. A review appraisal is required for any appraisal update. Appraisal and review appraisal updates may be reimbursed by RCO. An appraisal update obtained within 24 months of the original appraisal effective date is not considered a new appraisal.

Appraisal Waivers

When the estimated value of the property does not exceed \$10,000, and the acquisition is not complex, project sponsors may be exempt from having to meet appraisal and

appraisal review standards. Such exemptions must be requested in writing before closing on the property. In lieu of the appraisal standards, a project sponsor may submit a written "Finding of Value" that includes:

- The preparer's name, experience, and qualifications. The preparer must have sufficient understanding of the real estate market and shall not have any interest, direct or indirect, in the real property to be valued for compensation. Project sponsor staff may not prepare the "Finding of Value."³⁰
- A description of the methods and factors used to reach the value for compensation. This description must have enough detail to allow RCO to understand how the preparer used market information to decide a market value.

Examples of Findings of Value may include an "Administrative Offer" prepared by a certified right-of-way agent, a "Broker Price Opinion" prepared by a qualified real estate broker or other individual, or other narrative summary of recent market information and the analysis used to decide the market value of the property.

Appraisal Reviews

Independent appraisal reviews are required for all appraisals to confirm just compensation for the property. Appraisal reviews must include field inspections of the property and comparable sales when the appraisal sets the property value of the acquisition project at \$250,000 or higher. Desk reviews are acceptable for properties having a value less than \$250,000.

The review appraiser must approve or reject the value conclusion in the original appraisal.

- If the review appraiser approves the market value established in the original appraisal, he/she either can acknowledge that the appraisal meets the appraisal guidelines in this manual or do the necessary work to bring the original appraisal into compliance. The confirmed market value is the final just compensation for the property.
- If the review appraiser rejects the value established in the original appraisal, the project sponsor must either instruct the review appraiser to establish a new property value or obtain a new appraisal. The new property value then becomes the just compensation for the property. If the review appraiser previously had conducted a desk review of the property and now is working to establish a new property value, the review appraisal must take the form of a field review.

³⁰ Recreation and Conservation Funding Board Resolution 2010-34

Third Party Appraisals

The appraisal and review appraisal must be procured on behalf of the project sponsor. The appraisal and review appraisal may not be procured on behalf of the landowner or other third party with an interest in the sale unless approved by RCO in advance. If the project sponsor is partnering with a third party (e.g., land trust, other agency is assisting with negotiating the transaction, will co-hold rights, or hold third party rights), then the appraisal and appraisal review may be procured on behalf of and authorized by the project sponsor and the third party. The project sponsor must be listed as an intended user of the appraisal.³¹

Appraiser and Review Appraiser Qualifications

Chapter 18.140 Revised Code of Washington, Certified Real Estate Appraiser Act, establishes four certification or license categories.

- **State-certified general real estate appraiser** (license number begins with 270-11): Eligible to develop and communicate real estate appraisals of all types of properties.
- **State-certified residential real estate appraiser** (license number begins with 270-17): Eligible to develop and communicate real estate appraisals of all types of *residential* property of one to four units without regard to transaction value or complexity and *nonresidential* property having a transaction value less than \$250,000.
- **State licensed real estate appraiser** (license number begins with 270-16): Eligible to develop and communicate real estate appraisals of noncomplex, one to four residential units having a transaction value less than \$1 million dollars; complex, one to four residential units having a transaction value less than \$250,000; and nonresidential property having a transaction value less than \$250,000.
- **State registered appraiser trainee** (license number begins with 100): Eligible to assist certified real estate appraisers while gaining experience. The appraisal or review appraisal also must be signed by a certified real estate appraiser.

Project sponsors must select an appraiser and review appraiser with appropriate certifications or licenses from Washington State to perform appraisal work, unless the appraisal review is conducted by the Natural Resources Conservation Service for a Farmland Preservation Program project. Review appraisers must have an equal or greater

³¹ Recreation and Conservation Funding Board Resolution 2010-34

license certification than the original appraiser and cannot be selected from the same firm, organization, or agency/sponsor who conducted the original appraisal.

Project sponsor staff may perform appraisals or review appraisals if they meet the state licensing requirements. Project sponsor staff may not conduct the appraisal and appraisal review on the same property. If a staff person is conducting appraisal work on behalf of the project sponsor, he/she may communicate with the independent appraiser in the role as an appraiser, not as the client or the intended user of the appraisal. A staff person functioning as a negotiator with a property owner may not supervise or formally evaluate the performance of any appraiser or review appraiser.

Appraisal Costs

The cost to procure an appraisal and review appraisal are eligible project costs and are reimbursable per the project agreement, except for projects funded through the **Land and Water Conservation Fund** (see below). A copy of the appraisal and review appraisal must be submitted to RCO at the time of the reimbursement request for the appraisal and review costs. RCO recommends the project sponsor submit the appraisal and review appraisal in advance of closing on the property for RCO review to ensure that the scope of the appraisal meets the terms of the project agreement and this manual.

If a project is funded through the **Land and Water Conservation Fund**, the project sponsor must procure the appraisal and review appraisal at its own expense and the cost is not eligible as part of meeting the sponsor match requirement. See “Manual 15: Land and Water Conservation Fund” for more details on eligible acquisition costs in this program.

Only one appraisal and one review appraisal for each property is eligible. RCO may approve the cost for a new appraisal and review appraisal on a case-by-case basis in advance. The project sponsor must submit a written request to approve reimbursement for a new appraisal and review that includes adequate justification as to why the new work is required.

Section 6

Other Requirements for Each Transaction

In this section, you'll learn about:

- ✓ Encumbrances and title insurance
- ✓ Preliminary title review
- ✓ Complementary covenants or deed restrictions from other funders
- ✓ Hazardous substances certification
- ✓ Buying contaminated property
- ✓ Property boundary maps

Encumbrances and Title Insurance

Property rights acquired with RCO funding must be free of encumbrances that disproportionately limit the value or uses for the public (i.e., habitat conservation or salmon habitat recovery values or the recreation use of a site). RCO will make the final determination on which encumbrances on the property do not conflict with the purpose of the RCO funded project.

For example, an encumbrance on the property that allows for maintenance of a river dike may conflict with the salmon recovery purpose of the RCO funded project or an encumbrance for air rights over a proposed park acquisition may limit the type of future development allowed on site. Other examples of encumbrances that may be of concern are liens, lack of legal access, designated forest land or open space classifications, leases, septic drain fields, and other items that may limit the implementation of the RCO project.

Appraisal reports must consider the impact of all encumbrances to the market value of the property at the time of closing for the acquisition to qualify for reimbursement. If the appraisal contains assumptions that may impact value, RCO may require those assumptions to be completed at closing (e.g., assumptions regarding legal access would need to be acquired). The final title insurance policy must show that the property rights are free of unacceptable encumbrances as determined by RCO.

Title Insurance

A title insurance policy must be purchased on all real property acquisitions for the appraised value of the property to safeguard the rights acquired with grant funding. Extended or enhanced title insurance may be appropriate for certain acquisitions to mitigate for risks associated with the condition of the title. Extended title insurance may require a boundary survey and other additional costs. Contact RCO if you are required or are considering purchasing extended title insurance and seeking RCO reimbursement for the cost.

In some cases, a project sponsor may not be able to purchase title insurance because the property is uninsurable. An exception to the title insurance requirement may be the purchase of land from a railroad company or other unusual transactions. Consult with RCO if you are unable to obtain title insurance.

Preliminary Title Review

The preliminary title commitment for insurance must be reviewed to ensure the property is free of unacceptable encumbrances that may conflict with the purpose of the project. (See the section above.)

Preliminary title review occurs after grant funding is awarded but before RCO issues a project agreement.

RCO also may request a preliminary title report as part of a grant application if the conditions of the property are unclear or may potentially be ineligible for grant funding. RCO recommends project sponsors request an updated preliminary title report one month before closing on the property to ensure no new encumbrances have been placed on the property since the last title review.

RCO requires preliminary title review of all proposed acquisitions to ensure the above policies are met before closing on the property. Sponsors may choose one of the following three options for conducting preliminary title review.

1. Submit the preliminary title report for the target properties to be acquired for review before RCO issues a project agreement.

RCO will review the preliminary title report and identify any encumbrances that may be of concern or need to be cleared before closing, or

2. Submit the Preliminary Title Report Checklist in Appendix K along with the preliminary title report. On the checklist, the project sponsor certifies that he/she has reviewed the title and identified which encumbrances will be cleared before

closing. RCO will review the checklist and contact the project sponsor with any outstanding concerns.

3. Request approval from RCO to conduct preliminary title review independently (without RCO review) for all RCO funded projects. A sponsor may request independent review approval as an organization if it conducts multiple acquisitions with RCO funding. Your request must demonstrate your “best practices” for clearing title and ensuring that properties will meet RCO requirements in this manual. If approval is granted, a project sponsor proceeds with acquiring land at its own risk. RCO will withhold payment at reimbursement time if a property title does not meet RCO requirements.

On the rare occasion that a project sponsor cannot provide the preliminary title report in time, the sponsor may request a special condition be added to the project agreement that will require submittal of the preliminary title report before paying out any grant money.

Complementary Covenants or Deed Restrictions from Other Funders

If an acquisition project includes funding from other sources that also require some form of encumbrance on the property such as a Notice of Grant, deed restriction, or other encumbrance, the project sponsor must provide a draft of the encumbrance to RCO for review. RCO will review the encumbrance for consistency with RCO’s Deed of Right or Assignment of Rights and the project agreement before closing on the property. As long as the encumbrance from the other funding source is consistent and compatible with RCO’s funding, no conversion will occur per the policies in “Manual 7: Funded Projects.” RCO will amend the project agreement with a special condition to allow for the encumbrance from the other funding source and document that any future conversion will be valued without the other funding source’s encumbrance on the title.

Hazardous Substances Certification

Project sponsors that receive funding to buy real property, except for property acquired in the **Washington Wildlife and Recreation Program’s Farmland Preservation Program**, must certify that each parcel meets standards established under the Model Toxics Control Act³². Purchase of property contaminated with any hazardous substance not meeting the Model Toxics Control Act’s standards is ineligible for RCO grant funding. A hazardous substance is defined as:

³² Chapter 70.105D Revised Code of Washington

- Any dangerous or extremely hazardous waste as defined in Chapter 70.105.010(5) and (6) Revised Code of Washington, or any dangerous or extremely hazardous waste designated by rule pursuant to Chapter 70.105 Revised Code of Washington;
- Any hazardous substance as defined in Chapter 70.105.010(14) Revised Code of Washington or any hazardous substance as defined by rule pursuant to Chapter 70.105 Revised Code of Washington;
- Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);
- Petroleum or petroleum products; and
- Any substance or category of substances, including solid waste decomposition products, determined by the director [or director's designee] of the Department of Ecology by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

Project sponsors must complete a Hazardous Substances Certification for each parcel and provide documentation to support the certification. The certification form is provided in Appendix L. The certification ensures that the project sponsor has inspected, investigated, and conducted an environmental audit (see below) of the parcel for the presence of hazardous substances.

The project sponsor must certify:

1. No hazardous substances were found on the site, or
2. Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site deemed "clean."
3. The sponsor will defend, protect and hold harmless RCO and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property being acquired.

Project sponsors should complete the hazardous substances certification before acquiring the property. The certification must be submitted to RCO before reimbursement of the property costs.

Environmental Audits

An environmental audit is required supporting documentation for each Hazardous Substances Certification. Acceptable environmental audits are:

- Environmental site assessments per American Society for Testing and Materials (ASTM) standards,
- All Appropriate Inquiries per U.S. Environmental Protection Agency standards³³, or
- Property Assessment Checklist provided in Appendix M.

If there are significant findings or recommendations in the environmental audit, RCO may request the audit report be provided to the appraiser for consideration to determine whether the findings would affect the appraised value of the property. If an environmental audit identifies action items that are not related to cleanup of a hazardous substance (e.g., debris cleanup, empty tank removal, structure removal, well decommissioning, materials below Model Toxics Control Act cleanup levels, etc), such costs are eligible demolition expenses⁹. If the findings or recommendations will not be addressed during the active project agreement, the project sponsor must provide RCO with a plan to address the findings or recommendations in the future.

Buying Contaminated Property³⁴

Purchase of property contaminated with any hazardous substances not meeting standards as determined by the Department of Ecology's Model Toxics Control Act or the U. S. Environmental Protection Agency's Comprehensive Environmental Response, Compensation and Liability Act is ineligible for RCO grant funding except under the following circumstances:

- The intended future use of the property as proposed in the grant application can proceed and the Department of Ecology or U. S. Environmental Protection Agency has determined that cleanup is complete or no further cleanup action is needed; or

³³ Recreation and Conservation Funding Board Resolution 2010-34

³⁴ Recreation and Conservation Funding Board Resolution 2010-34

- The intended future use of the property as proposed in the grant application can proceed while cleanup monitoring is ongoing; or
- The property contains contaminated pilings which the project sponsor plans to remove in a future action or in combination with a funded RCO grant.

If a property is listed as contaminated with the Department of Ecology's Model Toxics Control Act or the U. S. Environmental Protection Agency's Comprehensive Environmental Response, Compensation and Liability Act, the project sponsor must provide RCO with a letter from the appropriate state or federal agency that states cleanup is complete or no further action is needed and the proposed grant application can move forward in order for the property to be eligible for grant funding.

RCO strongly advises project sponsors to buy land that has never been contaminated or is certified as meeting hazardous substances requirements. Clean-up costs are very hard to predict. Attempts to clean up a site can result in substantial expenses that are not eligible for RCO reimbursement or as sponsor match. If a project sponsor wishes to purchase a contaminated property that does not meet one of the above exceptions, the project sponsor may request a waiver of retroactivity (see Section 2). The property will be eligible for RCO funding after it has been cleaned up as long as the property is cleaned up before the expiration of the waiver of retroactivity.

Property Boundary Map Requirements

RCO requires a property boundary map for each parcel acquired to be filed with the Deed of Right or Assignment of Rights. The boundary map must include:

1. RCO project number and name
2. Project sponsor name
3. Date of the map preparation
4. Adjoining streets and roads
5. Boundary line of land protected by the Deed of Right or Assignment of Rights, whichever is applicable.
6. North arrow and scale

Project sponsors also may submit for the project file more detailed maps to document other features of the property. Other information that helps identify the property includes deed references, location of all known easements, outstanding rights, deed/lease restrictions, reversionary interests, adjoining ownerships, adjoining water

bodies or other natural landmarks, geographic coordinates at the site entrance or corners of the property, survey information, and other measurements. A professional survey is not required; however, if a survey has been completed with RCO funding and the property is acquired successfully, the survey must be recorded with the county auditor and a copy provided to RCO.

Section 7

Post-Award Issues

In this section, you'll learn about:

- ✓ Escrow payment requests
- ✓ Funding acknowledgement and signs
- ✓ Inspections
- ✓ Conservation easement monitoring
- ✓ Scope changes
- ✓ Compatible uses
- ✓ Income and income use
- ✓ Acquisition for future use
- ✓ Converting use
- ✓ Public disclosure rules
- ✓ Decision making responsibilities

Escrow Payments

Although RCO grants operate on a reimbursement basis, RCO can deposit money in an escrow account for a pending acquisition as long as certain conditions are met. RCO requires a minimum of 30 days to process an escrow payment. Contact RCO early to begin the escrow payment process. Once an escrow payment is approved, it can take three to seven business days for the funds to be received in escrow.

A project sponsor must request an escrow deposit in writing and include the following documents:

1. Acquisition reimbursement forms (e.g., A-19, Form 201 and Form 207) as required in "Manual 8: Reimbursements."
2. The "Voluntary Acquisition Notice" and the "Just Compensation and Relocation Notice."
3. Landowner donation statement, if applicable.

4. A legally binding agreement between the project sponsor and the landowner, typically a “Purchase and Sale Agreement” or an “Option Agreement.”
5. A copy of the Buyer’s Estimated Settlement Statement with evidence showing that the project sponsor’s matching share has been deposited into the escrow account.
6. Escrow payment instructions that include reference to recording RCO’s Deed of Right or Assignments of Rights, as applicable.
7. The draft transfer deed, easement, or lease.
8. The draft Deed of Right (for fee title acquisitions) or Assignment of Rights (for easements and leases).
9. Baseline inventory (for conservation easements only).
10. An updated preliminary title insurance report, if not previously provided.
11. Appraisal and appraisal review.
12. Hazardous Substances Certification and supporting checklist or environmental audit. (Not required for projects funded in the **Washington Wildlife and Recreation Program’s Farmland Preservation Program**.)

Once RCO deposits grant funding into the escrow account, closing must occur within 30 days or RCO may request the funds be returned. After the transaction is complete, a copy of the executed and recorded conveyance document, recorded Deed of Right or Assignment of Rights, and final title insurance policy, naming the sponsor as legal owner, must be provided within 60 days of closing.

Funding Acknowledgement and Signs

All acquisition projects, except projects in the **Washington Wildlife and Recreation Program’s Farmland Preservation Program**, must acknowledge the RCO grant, by program, at the project site. Funding acknowledgement must be posted before the project agreement end date. Project sponsors must send evidence of the funding acknowledgement to RCO by a photograph or some other evidence.

Some habitat conservation or salmon habitat recovery areas contain species or other resources so sensitive that it is unwise to place signs at the site. In these cases, the project sponsor may seek RCO approval to waive signing requirements.

Acknowledgement includes:

- Prominent placement of a sign on the property, unless waived by RCO. The sponsor may build such signs to harmonize with an existing design standard or request a standard acknowledgement sign from RCO.
- Recognition in any release or publication developed or modified for the project.
- Recognition at dedication ceremonies. Notify RCO at least two weeks before the ceremony if you wish to have a representative of RCO at the ceremony.

Inspections

RCO may visit an acquisition project at reasonable times. Inspections may occur at the application phase, before project funding, during the active project agreement, and post project completion. For less than fee title acquisitions, RCO will follow terms of access as stipulated in the legal document.

Conservation Easement Monitoring

The model habitat and agricultural conservation easement templates in Appendices C and D require that each easement include a provision to provide access to RCO's project sponsor to inspect the easement area and monitor compliance with the easement terms. Project sponsors must develop and implement an easement monitoring plan for RCO funded conservation easements. RCO recommends a project sponsor conduct easement monitoring at least annually. A conservation easement monitoring report based upon the project sponsor's adopted plan must be submitted to RCO once every five years³⁵.

Scope Changes

See "Manual 7: Funded Projects" for criteria related to changing the scope of an acquisition project after the project agreement is signed. The landowner acknowledgement and local jurisdiction review requirements in Section 6 of this manual apply to all project scope changes.

Compatible Uses

RCO allows non-outdoor recreation, salmon habitat recovery, or habitat conservation use of acquisition projects, such as timber management, grazing, and other natural resource uses. These uses must be:

³⁵ Recreation and Conservation Funding Board Resolution 2010-34

- Clearly compatible with the outdoor recreation, salmon habitat recovery, or habitat conservation use approved in the project agreement
- Clearly secondary to the outdoor recreation, salmon habitat recovery, or habitat conservation use approved in the project agreement
- Approved by RCO in writing.

Income and Income Use

The source of any income generated in a funded project or project work site must be compatible with the funding source and the agreement. User and other fees may be charged in connection with land acquired or facilities developed with funding board grants if the fees are consistent with the:

- Value of any services furnished;
- Value of any opportunities furnished; and
- Prevailing range of public fees in the state for the activity involved.

Excepted are **Firearms and Archery Range Recreation** program safety classes (firearm or hunter) for which a facility/range fee must not be charged³⁶.

Regardless of whether income or fees in a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, etc.) are gained during or after the reimbursement period cited in the agreement, unless precluded by state or federal law, the revenue may only be used to offset:

- The sponsor's matching funds.
- The project's total cost.
- The expense of operation, maintenance, stewardship, monitoring, or repair of the facility or program assisted by the funding board grant.
- The expense of operation, maintenance, stewardship, monitoring, or repair of other similar units in the sponsor's system.
- Capital expenses for similar acquisition or development.

³⁶ Chapter 79A.25.210 Revised Code of Washington

Acquisition for Future Use

When a project sponsor acquires real property for restoration or recreation development in the future, the property must be restored or developed as described in the project agreement within five years of acquiring the property (or three years for projects funded in the Land and Water Conservation Fund)³⁷. This ensures that the primary purpose for the acquisition is realized within a reasonable time and the public receives the intended benefit from its investment.

At the time of the grant application, the project sponsor may propose a timeline longer than five years for large scale, multi-phased projects. If the application is awarded a grant, RCO may incorporate the longer timeline in the project agreement. (This provision is not applicable to grants in the Land and Water Conservation Fund program.)

If the planned future use of the property will be delayed for more than five years (or more than three years for Land and Water Conservation Fund projects), the project sponsor must request in writing an extension before the time period expires. RCO may approve an extension based on the project sponsor's plans and construction schedule. Projects receiving an extension will remain in compliance with the project agreement.

Projects that are not constructed as proposed in the acquisition project or not granted an extension will be reviewed per RCO's compliance policy in "Manual 7: Funded Projects." If circumstances change that the scope will not be completed as originally proposed, then a project sponsor may request an "element change" to the project agreement.

Where appropriate, RCO may approve a request to restrict the public's use of a property for safety concerns until the property is developed or restored as planned.

Converting the Use of an RCO Funded Acquisition Project

A conversion occurs when a property acquired with RCO grant funding will be used for purposes other than originally stated in the project agreement. See RCO "Manual 7, Funded Projects" for a complete discussion of conversions and the process required for replacement of the public investment as required by the RCO Deed of Right or RCO Assignment of Rights.

When determining the market value of the property being converted, the project sponsor must instruct the appraiser to make a special assumption that the RCO Deed of Right or Assignment of Right is not encumbering the property and to assume zoning has kept up with surrounding properties. Because the RCO Deed of Right or Assignment of

³⁷ Recreation and Conservation Funding Board Resolution 2010-34

Right will be extinguished once the conversion is approved, the appraised value must reflect the property free and clear of this encumbrance.

For projects funded in the **Land and Water Conservation Fund** program, there are specific instructions on how to appraise conversions. See “Manual 15: Land and Water Conservation Fund” for more details on how to conduct appraisals for these projects.

Removing or Changing a Deed of Right

If a project sponsor needs to revise or remove a recorded Deed of Right, it may trigger a conversion of use. You should contact RCO to discuss the situation and how to meet the project agreement requirements. RCO will provide the necessary legal documentation needed to remove the Deed of Right from the property.

Public Disclosure Rules

RCO records and files, including those related to acquisitions, are public records that are subject to the Public Records Act³⁸. The appraisal and appraisal review are exempt from public disclosure for three years or until the sale is completed or abandoned. More information about the RCO’s disclosure practices is available on the Web site at www.rco.wa.gov/about/public_records.shtml.

Who Makes Decisions

Final decisions are made by the boards that govern RCO. Some decisions have been delegated to the agency director.

Board Decisions

The following list summarizes many acquisition project decisions that may be made only by the Recreation and Conservation Funding Board or Salmon Recovery Funding Board in a public meeting or by a subcommittee of the boards. Each is in accord with statutes, rules, and board policies.

- Initial grant approval.
- A project cost increase of more than 10 percent of the project total in the project agreement for Recreation and Conservation Funding Board projects. Cost increases are only allowed in certain grant programs. Consult “Manual 7: Funded Projects” for more criteria related to cost increases for board funded projects.

³⁸ Chapter 42.56 Revised Code of Washington

- A project cost increase of more than 20 percent of the project total in the project agreement for Salmon Recovery Funding Board funded projects. Consult "Manual 18: Salmon Recovery Grants" for more criteria related to cost increases for board funded projects.
- Approval to pay more than 10 percent in administrative costs of the total land and incidental costs combined.
- A major scope change as defined in "Manual 7: Funded Projects" in the property to be acquired. See Manual 7 for more criteria and information about major scope changes.
- A "conversion" that changes the project site or how the site is used from that described in the project agreement and Deed of Right or Assignment of Rights. See "Manual 7: Funded Projects" for more information about conversions.
- Changes in policy; for example, establishing new grant limits or eligible expenditures.

Director Decisions

The RCO director or staff designee makes many acquisition project decisions. The following list summarizes some of these decisions that relate to acquisition projects, each in accord with statutes, rules, and RCO policies:

- Authorize project reimbursements.
- Approve a project cost increase up to 10 percent of the project total in the project agreement for Recreation and Conservation Funding Board projects. A cost increase is limited to a specific parcel's fair market value³⁹. Cost increases are not allowed in all board grant programs. Consult "Manual 7: Funded Projects" for more criteria related to cost increases for board funded projects.
- Approve a project cost increase up to 20 percent of the project total in the Project Agreement for Salmon Recovery Funding Board projects. Consult "Manual #18: Salmon Recovery Grants" for more criteria related to cost increases for board projects.
- Approve paying up to 10 percent in administrative costs of the total land and incidental project costs.
- Approve payment of delinquent taxes due at the time of closing.

³⁹ Washington Administrative Code 286-13-085

- Approve payment up to 10 percent above the review appraised value of a property.
- Approve disregarding of new encumbrances on the property when determining appraised value.
- Approve acquisition of property with informal or no legal access.
- Approve more than one appraisal and appraisal review per property.
- Waive appraisal requirements for property that does not exceed \$10,000.
- Approve environmental assessment costs above 10 percent of the review appraised value of a property.
- Approve the qualifications of a relocation agent.
- Approve a minor scope change as defined in “Manual 7: Funded Projects” in the property to be acquired. See Manual 7 for more information about minor scope changes.
- Approve all draft legal documents for less than fee acquisitions.
- Issue a waiver of retroactivity to purchase property before execution of a RCO project agreement.
- Waive sign recognition and public access requirements.
- Approve time extensions.
- Terminate the project agreement.
- Approve interim and compatible uses of an RCO assisted site.
- Approve delayed restoration or development for future uses.
- Require that grant funds be repaid to RCO if spent in a manner that conflicts with the project agreement or applicable statutes, rules, or program policies.

A project sponsor may request that a decision made by the director be reconsidered. This is done by writing to the chair of the funding board at least 60 calendar days before the next board meeting. Requests will be placed on the meeting agenda with an opportunity for the petitioner to address the board. Any subsequent board decision is final.

Appendix A

Deed of Right (Recreation)

Deed of Right to Use Land for Public Outdoor Recreation Purposes

Grantor: _____(Sponsor Name)

Grantee: STATE OF WASHINGTON, acting by and through the
WASHINGTON STATE RECREATION AND CONSERVATION
BOARD, and the RECREATION AND CONSERVATION OFFICE,
including any successor agencies

Abbreviated
Legal Description _____ (More particularly described in Exhibit "A" (Legal
Description) and as depicted in Exhibit "B" (Property Map),

The Grantor enters this Deed for and in consideration of monies coming in whole or in part from the _____Account. Such grant is made pursuant to the Project Agreement entered into between the Grantor and the Grantee entitled Project Number _____signed by the Grantor on the ___day of ___ and the Grantee the ___day of___ and supporting materials, which are on file with the Grantor and the Grantee in connection with the Project Agreement.

The Grantor hereby conveys and grants to the Grantee as the representative of the people of the State, the right to enforce the following duties:

1. The Grantor shall take such reasonable and feasible measures as are necessary to protect the Real Property as described in Exhibit A: Legal Description for _____ purposes, consistent with the Project Agreement, so as to provide public access to outdoor recreation opportunities in perpetuity and protect public outdoor recreation and park resources.
2. The Grantor shall allow public access to the Property as provided in the Project Agreement. Such access shall be subject to the restrictions allowed under the

Project Agreement, by written agreement with the Grantee, or under state law. This provision is not intended to prevent reasonable access or use restrictions that are necessary for safe and effective management of the property consistent with outdoor recreation purposes and the Project Agreement.

3. The Grantor shall provide access to the Grantee to inspect the Real Property for compliance with the terms of this Deed and the applicable Project Agreement to which the Grantor is a signatory. Such access shall be subject to the restrictions, if any, allowed under the Project Agreement, by written agreement with the Grantee, or under state law. The Grantor warrants it has and shall maintain the legal right and means to reach the property.
4. Without the prior written consent of the Grantee or its successors, through an amendment to the Project Agreement or the process set forth below, the Grantor shall not use or allow any use of the Real Property (including any part of it) that is inconsistent with the recreation purposes herein granted and as stated in the Project Agreement. The Grantor shall also not grant or suffer the creation of any property interest that is inconsistent with the recreation purposes herein granted and as stated in the Project Agreement.

Grantee's consent to an inconsistent use or property interest under this Deed shall be granted only to the extent permitted by law and upon the following three conditions, which ensure the substitution of other eligible land. The conditions are: (1) the substitute recreation land must be of reasonably equivalent usefulness and location for the public outdoor recreation purposes as the Real Property prior to any inconsistent use; (2) the substitute recreation land must be of at least equal fair market value to the Real Property at the time of Grantee's consent to the inconsistent use; and (3) the fair market value of the Real Property at the time of the Grantee's consent to the inconsistent use shall not take into consideration any encumbrances imposed on or alterations made to that land as a result of the original state grant and other grants if such encumbrances or alterations reduce the value of the Real Property from what it would be without them.

For purposes of this Deed the Project Agreement includes any amendments thereto that occur prior or subsequent to the execution of this Deed.

This Deed contains covenants running with the land and shall be binding upon the Grantor, its successors and assigns, and upon any person acquiring the Property, or any portion thereof, or any interest therein, including a leasehold interest, whether by operation of law or otherwise. If the Grantor sells all or any portion of its interest, the new owner of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be subject to applicable covenants and requirements under the Deed.

This Deed may not be removed or altered from the Real Property unless specific approval has been granted by the Washington State Recreation and Conservation Office and/or the Washington State Recreation and Conservation Funding Board or its successors.

The Washington State Recreation and Conservation Office and the Recreation and Conservation Funding Board and/or its successors shall each have a separate and independent right to enforce the terms of this deed.

Exhibit A

Legal Description

PARCEL "A"

Exhibit B

Property Map⁴⁰

⁴⁰ Map must include: (1) RCO project number and name; (2) project sponsor name; (3) date of map preparation; (4) adjoining streets and roads where applicable; (5) boundary line of land acquired; and, (6) North arrow and scale. A professional legal survey may substitute for the preceding map elements.

Appendix B

Deed of Right (Conservation)

Deed of Right to Use Land for Conservation Purposes

Grantor: _____(Sponsor Name)

Grantee: STATE OF WASHINGTON, acting by and through the
WASHINGTON STATE RECREATION AND CONSERVATION
BOARD, and the RECREATION AND CONSERVATION OFFICE,
including any successor agencies

Abbreviated
Legal Description _____ (More particularly described in Exhibit "A" (Legal
Description) and as depicted in Exhibit "B" (Property Map),

The Grantor enters this Deed for and in consideration of monies coming in whole or in part from the _____ Account. Such grant is made pursuant to the project agreement entered into between the Grantor and the Grantee entitled Project Number _____ signed by the Grantor on the ____ day of ____ and the Grantee the ____ day of ____ and supporting materials, which are on file with the Grantor and the Grantee in connection with the project agreement.

The Grantor hereby conveys and grants to the Grantee as the representative of the people of the State, the right to enforce the following duties:

1. The Grantor shall take such reasonable and feasible measures as are necessary to protect the Real Property as described in Exhibit A: Legal Description, in perpetuity. Such measures shall be consistent with the purposes in the project agreement, including protecting, preserving, restoring and/or enhancing the habitat functions on the Real Property, which includes _____ habitat. This habitat supports or may support priority species including but not limited to _____

2. The Grantor shall allow public access to the Property as provided in the project agreement. Such access shall be subject to the restrictions allowed under the project agreement, by written agreement with the Grantee, or under state law. This provision is not intended to prevent reasonable access or use restrictions that are necessary for safe and effective management of the property consistent with habitat conservation purposes and the project agreement.
3. The Grantor shall provide access by the Grantee to inspect the Real Property for compliance with the terms of this Deed and the applicable project agreement to which the Grantor is a signatory. Such access shall be subject to the restrictions, if any, allowed under the project agreement, by written agreement with the Grantee, or under state law. The Grantor warrants it has and shall maintain the legal right and means to reach the property.
4. Without prior written consent by the Grantee or its successors, through an amendment to the project agreement or the process set forth below, the Grantor shall not use or allow any use of the Real Property (including any part of it) that is inconsistent with the conservation purposes herein granted and as stated in the project agreement. The Grantor shall also not grant or suffer the creation of any property interest that is inconsistent with the conservation purposes herein granted and as stated in the project agreement.

Grantee's consent to an inconsistent use or property interest under this Deed shall be granted only to the extent permitted by law and upon the following three conditions, which ensure the substitution of other eligible land. The conditions are: (1) the substitute conservation land must be of reasonably equivalent habitat qualities, characteristics and location for the conservation purposes as the Real Property prior to any inconsistent use; (2) the substitute conservation land must be of at least equal fair market value to the Real Property at the time of Grantee's consent to the inconsistent use; and (3) the fair market value of the Real Property at the time of the Grantee's consent to the inconsistent use shall not take into consideration any encumbrances imposed on or alterations made to that land as a result of the original state grant and other grants if such encumbrances or alterations reduce the value of the Real Property from what it would be without them.

For purposes of this Deed the project agreement includes any amendments thereto that occur prior to or subsequent to the execution of this Deed.

This Deed contains covenants running with the land and shall be binding upon the Grantor, its successors and assigns, and upon any person acquiring the Property, or any portion thereof, or any interest therein, including a leasehold interest, whether by operation of law or otherwise. If the Grantor sells all or any portion of its interest, the new owner of the Property or any portion thereof (including, without limitation, any

owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be subject to applicable covenants and requirements under the Deed.

This Deed may not be removed or altered from the Real Property unless specific approval has been granted by the Washington State Recreation and Conservation Office and/or the Washington State Recreation and Conservation Funding Board or its successors.

The Washington State Recreation and Conservation Office and the Recreation and Conservation Funding Board and/or its successors shall each have a separate and independent right to enforce the terms of this deed.

Exhibit A

Legal Description

PARCEL "A"

EXHIBIT B

Property Map⁴¹

⁴¹ Map must include: (1) RCO project number and name; (2) project sponsor name; (3) date of map preparation; (4) adjoining streets and roads where applicable, (5) boundary line of land acquired; and, (6) North scale and scale. A professional legal survey may substitute for the preceding map elements.

Appendix C

Deed of Right (Salmon Recovery)

Deed of Right to Use Land for Salmon Recovery Purposes

Grantor: _____(Sponsor Name)

Grantee: STATE OF WASHINGTON, acting by and through the
WASHINGTON STATE SALMON RECOVERY FUNDING BOARD,
and the RECREATION AND CONSERVATION OFFICE, including
any successor agencies

Abbreviated
Legal Description _____ (More particularly described in Exhibit "A" (Legal
Description) and as depicted in Exhibit "B" (Property Map))

The Grantor enters this Deed for and in consideration of monies coming in whole or in part from the _____ Account. Such grant is made pursuant to the Project agreement entered into between the grantor and the grantee entitled Project Number _____ signed by the Grantor on the ____ day of ____ and the Grantee the ____ day of ____ and supporting materials, which are on file with the Grantor and the Grantee in connection with the project agreement.

The Grantor hereby conveys and grants to the Grantee as the representative of the people of the State, the right to enforce the following duties:

1. The Grantor shall take such reasonable and feasible measures as are necessary to protect the Real Property as described in Exhibit A: Legal Description, in perpetuity. Such measures shall be consistent with the purposes in the project agreement, including protecting, preserving, restoring and/or enhancing the habitat functions on the Real Property, which includes _____. This habitat

supports or may support priority species or groups of species including but not limited to_____.

2. The Grantor shall allow public access to the Property as provided in the project agreement. Such access shall be subject to the restrictions allowed under the project agreement, by written agreement with the Grantee, or under state law. This provision is not intended to prevent reasonable access or use restrictions that are necessary for safe and effective management of the property consistent with salmon recovery purposes and the project agreement.
3. The Grantor shall allow access by the Grantee to inspect the Real Property for compliance with the terms of this Deed and the applicable project agreement to which the Grantor is a signatory. Such access shall be subject to the restrictions, if any, allowed under the project agreement, by written agreement with the Grantee, or under state law. The Grantor warrants it has and shall maintain the legal right and means to reach the property.
4. Without prior written consent by the Grantee or its successors, through an amendment to the project agreement or the process set forth below, the Grantor shall not use or allow any use of the Real Property (including any part of it) that is inconsistent with the salmon recovery purposes herein granted and as stated in the project agreement. The Grantor shall also not grant or suffer the creation of any property interest that is inconsistent with the salmon recovery purposes herein granted and as stated in the project agreement.

Grantee's consent to an inconsistent use or property interest under this Deed shall be granted only to the extent permitted by law and upon the following three conditions, which ensure the substitution of other eligible land. The conditions are: (1) the substitute salmon recovery land must be of reasonably equivalent habitat qualities, characteristics and location for the salmon recovery purposes as the Real Property prior to any inconsistent use; (2) the substitute salmon recovery land must be of at least equal fair market value to the Real Property at the time of Grantee's consent to the inconsistent use; and (3) the fair market value of the Real Property at the time of the Grantee's consent to the inconsistent use shall not take into consideration any encumbrances imposed on or alterations made to that land as a result of the original state grant and other grants if such encumbrances or alterations reduce the value of the Real Property from what it would be without them.

For purposes of this Deed, the project agreement includes any amendments thereto that occurred prior to or may occur subsequent to the execution of this Deed.

This Deed contains covenants running with the land and shall be binding upon the Grantor, its successors and assigns, and upon any person acquiring the Property, or any portion thereof, or any interest therein, including a leasehold interest, whether by

operation of law or otherwise. If the Grantor sells all or any portion of its interest, the new owner of the Property or any portion thereof (including, without limitation, any owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be subject to applicable covenants and requirements under the Deed.

This Deed may not be removed or altered from the Real Property unless specific approval has been granted by the Washington State Recreation and Conservation Office and/or the Washington State Salmon Recovery Funding Board or its successors.

The Washington State Recreation and Conservation Office and the Salmon Recovery Funding Board and/or its successors shall each have a separate and independent right to enforce the terms of this Deed.

Exhibit A

Legal Description

PARCEL "A"

Exhibit B

Property Map⁴²

⁴² Map must include: (1) RCO project number and name; (2) project sponsor name; (3) date of map preparation; (4) adjoining streets and roads where applicable, (5) boundary line of land acquired; and, (6) North arrow and scale. A professional legal survey may substitute for the preceding map elements.

Appendix D

Conservation Easement Requirements

Introductory Key

☑ = **Required** provisions

☐ = Provisions to **strongly consider**

"Arial typeface" = Sample language

[Italicized/bracketed language] = text choices which may or may not apply

Recitals: Background Information

- ☑ Separately identify the portion of the property that contains the habitat or conservation value that will be protected, or protected and restored or enhanced, by the conservation easement.

The portion of the Property containing conservation values and protected by this Easement is described in Exhibit __ (description) and shown in Exhibit __ (site map), which are attached and incorporated into this Easement by this reference.

- ☑ Note conservation values provided by the property.

The Conservation Zone provides habitat and other natural values (collectively, the "Conservation Values"), as more particularly described in Recitals __ and __ below.

- ☑ Refer to the baseline documentation (page 92).

The specific conservation values of the Property are documented in an inventory of relevant features of the Property, dated _____ *[on file at the offices of Grantee][attached hereto as Exhibit ____]* and incorporated by this reference ("Baseline

Documentation”), which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of conservation easement acquisition, and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant.

Conveyance and consideration

- ☒ Track statutory language necessary to convey real property interests in Washington State.
- ☒ Identify term of conservation easement (e.g., 30 year-term or in perpetuity).

Purpose

- ☒ Identify habitat protection as one of the specific purposes of the conservation easement.

Purpose. The purpose of this Easement is to assure that the Conservation Zone will be retained predominantly in its natural condition *[as "a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,"]*, and to prevent any use of, or activity on, the Conservation Zone that will *[significantly]* impair or interfere with the Conservation Values of the Conservation Zone (the "Purpose"). This Purpose includes the protection of habitat as defined in Recital I.__ of this Easement. Grantor intends that this Easement will confine the use of, or activity on, the Conservation Zone to such uses and activities that are consistent with this Purpose. *[Except as specifically provided for in Section __, t][T]*his Easement shall not be construed as affording to the general public physical access to the Property.

- ☒ Identify, as appropriate, any plans to monitor, protect, maintain, restore or enhance the Conservation Zone.

Stewardship Plan. To further this Purpose, Grantee may develop a plan for stewardship of the Conservation Zone (the "Stewardship Plan") *[which is attached as Exhibit __ and incorporated into this Easement by this reference]*. The Stewardship Plan *[is intended to describe][describes]* activities to monitor, protect, maintain, and *[restore] [enhance]* the original and natural conditions of the Conservation Zone.

Rights Conveyed to Grantee

- ☒ List the rights that are being conveyed to the organization holding the conservation easement (Grantee).

To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

- ☒ Provide right of organization to preserve conservation values of the property.

[Identification] Protection [Restoration] [Enhancement]. To [identify,] preserve and protect [in perpetuity] and to [restore] [enhance] [maintain] [and manage] the Conservation Values of the Conservation Zone.

- ☒ Provide right of organization to enter the land for inspection and enforcement, and where applicable, environmental monitoring, maintenance, restoration, and enhancement.

Access

1. To enter the Property *[annually]*, at a reasonable time and upon prior written notice to Grantor, for the purpose of making a general inspection of the Conservation Zone to monitor compliance with this Easement.
 2. To enter the Property *[, or allow Grantee's invitees or licensees to enter the Property,]* at reasonable times and upon prior written notice to Grantor, for the purpose of *[restoring] [enhancing] [maintaining] [managing]* the Conservation Values of the Conservation Zone through implementation of the Stewardship Plan.
 3. To enter the Property at such other times as are necessary if Grantee has a reason to believe that a violation of the Easement is occurring or has occurred, for the purpose of mitigating or terminating the violation and otherwise enforcing the provisions of this Easement. Such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Property.
- ☒ Provide right to injunction to prevent any activity on or use of the property that is inconsistent with the purpose of the conservation easement and to require restoration of the land to condition at time of the grant of easement.

Injunction and Restoration. To enjoin any use of, or activity on, the Conservation Zone that is inconsistent with the Purpose of this Easement, including trespasses by members of the public, and to require *[or undertake]* the restoration of such areas or features of the Conservation Zone as may be damaged by uses or activities inconsistent with the provisions of this Easement, all in accordance with Section__.

- ☒ Provide right of organization to enforce terms of the conservation easement.

To enforce the terms of this Easement, consistent with Section __.

Permitted Uses and Activities

- A. Tailor "permitted uses and activities" to the land, the parties, the reasons for protection, and needs of the landowner to enjoy the property. Permitted uses might include modification of existing structures, construction of roads or

structures in specified areas, access by grantor for passive recreation, agricultural or timber harvesting activities in specified areas or under specified conditions.

- ☒ Include ability to undertake stewardship activities on the property.

Stewardship Activities. The undertaking of any activity pursuant to any Stewardship Plan covering the Conservation Zone is consistent with the purpose of this Easement.

Prohibited Uses and Activities

- ☒ Tailor "prohibited uses and activities" to the land, the parties, the reasons for protection, and needs of the landowner to enjoy the property. Prohibited uses might include agricultural or timber harvesting activities in specified areas, land subdivision, construction of roads or structures, hunting, or mining.

Notice and Approval

- ☒ Require advance notice to organization if landowner plans to undertake certain permitted actions that could be inconsistent with the purpose of the conservation easement.
- ☒ Provide right of organization to approve, deny or condition proposed actions of landowner.
- ☒ Provide addresses of landowner and organization for required notices under the easement.

Dispute Resolution and

- ☒ Provide right of organization to give notice of violations to landowner, with demand for repair or restoration.

Grantee's Remedies

Notice of Violation, Corrective Action. If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Conservation Zone resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Conservation Zone so injured to its prior condition in accordance with a plan approved by Grantee.

Grantor's Failure to Respond. Grantee may bring an action as provided in subsection___ if Grantor:

1. Fails to cure the violation within thirty (30) days after receipt of a notice of violation from Grantee; or

2. Under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.

Grantee's Action.

1. *Injunctive Relief.* Grantee may bring an action at law or in equity in a court having jurisdiction to enforce the terms of this Easement:
 - A. To enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction; and
 - B. To require the restoration of the Property to the condition that existed prior to any such injury.
2. *Damages.* Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of environmental values. Without limiting Grantor's liability in any way, Grantee [*in its sole discretion, may*][*shall first*] apply any damages recovered to the cost of undertaking corrective or restoration action on the Conservation Zone.

Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Conservation Zone, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.

Scope of Relief. Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- ☐ Consider providing that costs of enforcing the terms of the easement are to be borne by landowner unless landowner prevails in court.

In the event Grantee must enforce the terms of this Easement, the costs of restoration necessitated by acts or omissions of Grantor, its agents, employees, contractors, family members, invitees or licensees in violation of the terms of this

Easement and Grantee's reasonable enforcement expenses, including attorneys' and consultants' fees, shall be borne by Grantor or those of its personal representatives, heirs, successors, or assigns, against whom a judgment is entered. *[In the event that Grantee secures redress for an Easement violation without initiating or completing a judicial proceeding, the costs of such restoration and Grantee's reasonable expenses shall be borne by Grantor and those of its personal representatives, heirs, successors, or assigns who are otherwise determined to be responsible for the unauthorized use or activity.] [If Grantor ultimately prevails in any judicial proceeding initiated by Grantee to enforce the terms of this Easement, each party shall bear its own costs.]*

- ☐ Consider providing that enforcement of the terms of the easement is at discretion of organization.

Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

- ☐ Consider providing that landowner waive claims and defenses, based upon waiver, laches, estoppel, or prescription.

Grantor acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against Grantee or its successors or assigns under or pertaining to this Easement based upon waiver, laches, estoppel, or prescription.

- ☐ Strongly consider providing that organization cannot bring enforcement action against landowner for injury to the property resulting from circumstances beyond landowner's control.

Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Conservation Zone or to recover damages for any injury to or change in the Conservation Zone resulting from causes beyond Grantor's control, including, without limitation, natural changes, fire, flood, storm, or earth movement, or from acts of trespassers, that Grantor could not reasonably have anticipated or prevented or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Conservation Zone resulting from such causes. *[In the event the terms of this Easement are violated by acts of trespassers that Grantors could not reasonably have anticipated or prevented, Grantor agrees, at Grantee's option, to join in any suit, to assign its right of action to Grantee, or to appoint Grantee its attorney in fact, for the purpose of pursuing enforcement action against the responsible parties.]*

Costs, Liabilities and Insurance, Taxes

- ☐ Consider providing that landowner remains responsible for property and for maintaining adequate comprehensive general liability insurance coverage.

Environmental Compliance, and Indemnification

- ☐ Consider providing that landowner still pays property taxes, reduced or otherwise.
- ☒ Require landowner to represent and warrant that no toxic or hazardous substances are found on the property.

Grantor represents and warrants that, after reasonable investigation and to the best of Grantor's knowledge.

1. Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements, applicable to the Property and its use, including without limitation all federal, state, and local environmental laws, regulations, and requirements;
 2. There has been no release, dumping, burying, abandonment or migration from off-site onto the Property of any substances, materials, or wastes that are hazardous, toxic, dangerous, or harmful or are designated as, or contain components that are, or are designated as, hazardous, toxic, dangerous, or harmful and/or that are subject to regulation as hazardous, toxic, dangerous, or harmful by any federal, state or local law, regulation, statute, or ordinance;
 3. There is no pending or threatened litigation affecting the Property or any portion of the Property that will materially impair the Conservation Values of the Conservation Zone. No civil or criminal proceedings have been instigated or are pending against Grantor or its predecessors by government agencies or third parties arising out of alleged violations of environmental laws, and neither Grantor nor its predecessors in interest have received any notices of violation, penalties, claims, demand letters, or other notifications relating to a breach of environmental laws.
- ☒ Require landowner to be responsible for environmental cleanup on the property unless caused through the activities of the organization or agency.

Remediation. If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic or dangerous to the air, water or soil, or in any way harmful or threatening to human health or environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless

the release was caused by Grantee, in which case Grantee should be responsible for remediation.

- ☒ Require landowner to remain responsible for losses, personal injuries, environmental concerns, and other damages unless caused by fault or negligence of the organization.

Grantor hereby agrees to release and hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the personal representatives, heirs, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' and consultants' fees, arising from or in any way connected with:

1. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property that is not a consequence of any activity of any of the Indemnified Parties undertaken under the rights granted to Grantee under this Easement;
2. Violations or alleged violations of, or other failure to comply with, any federal, state or local environmental law or regulation relating to pollutants or hazardous, toxic or dangerous substances or materials, including, without limitation, CERCLA (42 U.S.C. 9601 *et seq.*) and MTCA (Chapter 70.105D Revised Code of Washington), by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property, unless such violations or alleged violations are due to the acts or omissions of any of the Indemnified Parties on the Property;
3. The presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement of hazardous, toxic or dangerous to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties;
4. The obligations, covenants, representations, and warranties specified in this section.

Extinguishment, Valuation and Subsequent Transfer

- ☒ Provide that conservation easement may be extinguished in whole or in part before expiration of its term only if: (a) the organization determines that the purpose of the conservation easement is no longer practical to accomplish and the parties agree to

extinguish the easement or release a portion of the conservation zone from the conservation easement; (b) a court determines that the purpose of the conservation easement is no longer possible to accomplish; or (c) the property is taken by eminent domain. Refer to the Assignment of Rights in Manual 3 Appendix G.

Extinguishment. This Easement may be terminated or extinguished, whether in whole or in part, before expiration of the term of the Easement only under one or more of the following circumstances:

1. The parties jointly agree to extinguish this Easement, or release a portion of the Conservation Zone from the terms of this Easement, upon a determination by Grantee in its discretion that circumstances have rendered the Purpose of this Easement impractical to achieve. Grantee's determination shall be in accordance with the provisions of the Assignment of Rights referenced in Section ____.
2. Upon petition by one or all of the parties, a court having jurisdiction over this Easement determines by judicial proceedings that circumstances have rendered the Purpose of this Easement impossible to achieve.
3. All or any of the Conservation Zone is taken by exercise of the power of eminent domain or acquired in lieu of condemnation, whether by public, corporate, or other authority. *[Grantor and Grantee shall act jointly to recover the full value of the interest in the Conservation Zone subject to the taking or in lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount received.]*

Grantor and Grantee agree that the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Conservation Zone subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Washington law at the time, in accordance with Section __ of this Easement.

- ☒ Specify how to determine the fair market value of the real property interest held by the organization.

This Easement constitutes a real property interest immediately vested in Grantee, which, for the purpose of Section __ of this Easement, the parties stipulate to have a fair market value determined by *[multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in the value after the effective date of this Easement attributable to improvements) by the ratio of the purchase price for the Easement to the fair market value of the Property, without deduction for the purchase price for the Easement, as of the effective date of this Easement]*.

- ☒ Require landowner to reference conservation easement in subsequent deeds and notify organization of sale or transfer and name of prospective transferee (but landowner's failure to do so must not impair the validity of the conservation easement or limit its enforceability in any way).

Subsequent Transfer. Grantor agrees to:

1. Incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest;
2. Describe this Easement in and append it to any executory contract for the transfer of any interest in the Property;
3. Give written notice to Grantee of the transfer of any interest in all or a portion of the Property no later than forty-five (45) days prior to the date of such transfer. Such notice to Grantee shall include the name, address, and telephone number of the prospective transferee or the prospective transferee's representative.

The failure of Grantor to perform any act required by this subsection shall not impair the validity of this Easement or limit its enforceability in any way.

Easement Amendment

- ☐ Consider allowing for amendment of the conservation easement, provided that the amendment does not affect the qualification of the conservation easement or the status of the organization or agency under applicable laws, is consistent with the original purpose of the conservation easement and does not shorten its duration, and is in accordance with the Assignment of Rights.

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; *provided* that no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws, including without limitation Chapter 64.04.130, Chapter 84.34 Revised Code of Washington [*or Section 170(h) of the Internal Revenue Code of 1986, as amended*] (or any successor provision(s) then applicable). Any such amendment shall be consistent with the original Purpose of this Easement and shall not shorten its duration, shall be in accordance with the provisions of the Assignment of Rights referenced in Section ___, and shall be recorded in the official records of _____ County, Washington, and any other jurisdiction in which such recording is required.

Assignment and Succession

- ☒ Provide right of organization to assign (transfer) easement to another organization or entity eligible under the RCO, which also *qualifies* under Washington law [and IRS regulations], in accordance with the Assignment of Rights.

Assignment. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is authorized to acquire and hold conservation easements under Chapter 64.04.130 or Chapter 84.34.250 Revised Code of Washington (or any successor provision((s)) then applicable) *[and a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated there under]* and in accordance with the provisions of the Assignment of Rights referenced in Section _____. As a condition of such transfer, Grantee shall require that the transferee exercise its rights under the assignment consistent with the Purpose of this Easement. Grantee shall notify Grantor in writing, at Grantor's last known address, in advance of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

- ☒ Provide for assignment of certain rights in the conservation easement to the State of Washington through the Interagency Committee for Outdoor Recreation.

Grantor hereby acknowledges its authorization and approval of the assignment of certain rights in this Easement to the State of Washington through the Interagency Committee for Outdoor Recreation, which rights shall be co-held by Grantee and the State of Washington through the Recreation and Conservation Office. This Assignment of Rights shall be substantially in the form attached to this Easement as Exhibit ____.

Recordation

- ☒ Require that the organization or agency record the conservation easement instrument. (Recordation is the only way to put the world at large on constructive notice of the conservation easement.)

Subordination

- ☒ Require consent by mortgage holders, owners of easements, lease holders, and other lien holders necessary to "bind" those parties to the terms of the conservation easement.

General Provisions

- ☒ Provide that interpretation and performance of the conservation easement is governed by the laws of the State of Washington.
- ☒ Provide for liberal construction in favor of the grant of the conservation easement to effect the purpose of the conservation easement.
- ☒ Provide that conservation easement terms are binding upon parties and their successors and assigns.
- ☒ Require execution and acknowledgment by landowner and organization or agency.

Appendix E

Farmland Conservation Easement Templates

Farmland Conservation Easement Templates

Model Conservation Easement (land trust is third party)

www.rco.wa.gov/documents/manuals&forms/model_agcons_easement_third_party.pdf

Model Conservation Easement (land trust is co-grantee)

www.rco.wa.gov/documents/manuals&forms/model_agcons_easement_co-grantee.pdf

Appendix F

Baseline Inventory

Baseline inventory

Completing a baseline inventory allows you to record and characterize the environmental aspects of the property at the time of easement acquisition. An inventory provides the basis for future easement monitoring and, if necessary, enforcement. It is particularly important in court in the event of an easement violation. A baseline inventory also is required by the Internal Revenue Service for any tax-deductible easement gifts.

RCO requires that the baseline inventory be completed on all properties with a conservation easement. If the baseline inventory is not filed as an attachment to the conservation easement, it must be referenced in the conservation easements as to its existence and whereabouts. In determining where the original baseline inventory will reside, you may want to consider who will hold the easement and who may be undertaking future compliance monitoring and enforcement activities. RCO must be provided with a copy of the baseline inventory.

Baseline data should characterize and document the condition of property features protected or affected by the easement terms. The baseline inventory should be descriptive and include maps, plans, photographs (aerials or ground), and narratives. Documentation methodology should be objective and reproducible so that future monitoring can be repeated in a comparable manner. Include ecological, biological, geological, land use, and other property features. The level of detail for each category may vary depending on physical land features and the specific terms of the easements. Generally, the more restrictive the terms of the easements, the more detailed the documentation should be.

Using your own format. If you choose to use your own format, the baseline inventory must include:

- ☒ U.S. Geological Survey quad map (1:24,000, 7.5"), showing property lines and other contiguous or nearby protected areas, and a parcel map or county assessors map showing property boundaries.

- ☑ A map of the area drawn to scale showing all existing human-made improvements or incursions (such as roads, buildings, fences, or structures), vegetation and wildlife (species locations, breeding and roosting areas, and migration routes), land use history (including present uses and recent past disturbances), and distinct natural features (such as large trees and riparian areas).
- ☑ A narrative description of the property protected by the conservation easement (at or near the time of easement purchase). Include habitat values, unique and existing land features, natural resources (include vegetation and fish and wildlife), water quality and quantity, and historic and current land uses.
- ☑ Photographs (black and white) taken at permanent photograph point locations on the property that adequately depict the conservation easement area and natural resources to be protected. The photographs should document the condition of the resource at or near the time of easement purchase. Include aerial photographs with property boundaries indicated (if possible).

The Land Trust Alliance has two excellent references regarding baseline inventories, monitoring, and stewardship of easements: *Managing Conservation Easements in Perpetuity*; and *Conservation Easement Stewardship*. www.landtrustalliance.org/

Appendix G

Assignment of Rights

Assignment of Rights Template

Upon Recording, Please Return To:

Washington Recreation and Conservation Office
PO Box 40917
Olympia, WA 98504-0917

Attn: *[insert grant manager's name]*

Document Title: Assignment of Rights

Reference No. of Related Document:

Assignor: Sponsor Name

Assignee: The State of Washington, through the Recreation and Conservation Office, including any successor agencies

Abbreviated Legal Description:

Assessor's Parcel Nos:

ASSIGNMENT OF RIGHTS WASHINGTON STATE RECREATION AND CONSERVATION OFFICE

This ASSIGNMENT OF RIGHTS (this "Assignment") is executed as of the ____ day of _____, 20__, by _____, a _____ ("Assignor [name]"), to and in favor of THE STATE OF WASHINGTON through the Recreation and Conservation Office ("Assignee State"), including any successor agencies.

RECITALS

- A. Assignor has entered into [insert full title of easement or lease, e.g., Conservation Easement, Easement for Ingress, Egress and Public Access, or Trail Easement or Lease Agreement, etc.] ("Easement or Lease") with [a] certain property owner[s] (collectively "Owner") in _____[insert county name], Washington. The name[s] and address[es] of the Owner and the recording number of the Easement or Lease are set forth in Exhibit 1 attached hereto and incorporated herein. The legal description of the Property subject to the Easement or Lease is set forth in Exhibit 2 attached hereto and incorporated herein.
- B. The purpose of the Easement or Lease is described in the Easement or Lease. That purpose is also described in the Project Agreement entered into between the recipient of RCO funds ("Sponsor") and the Assignee through the RCO entitled _____ Project Number _____ dated _____, 20__ and the supporting materials which are on file with the Assignee in connection with the Project Agreement, which Project Agreement is incorporated herein by this reference. That purpose includes [protection] [and restoration] [and enhancement] [restoration and enhancement] of habitat [public access] [trail, etc.], as defined in the Easement or Lease.
- C. Owner has authorized Assignor to assign to the Assignee certain rights for access to and stewardship of the property covered by the Easement or Lease. Assignment of such rights is a necessary condition to receipt of grant funding under the Project Agreement and the policies of the [Recreation and Conservation Funding Board or Salmon Recovery Funding Board] administered by the Assignee. Such rights are valuable to the Assignee in connection with ensuring [protection of habitat] [protection of public rights] under the terms of the Easement or Lease. The assignment of such rights to the Assignee State, however, does not in any way relieve the Assignor [name] of such duties to enforce the Conservation Easement or Lease as may be imposed on it under the Conservation Easement or Lease and the Project Agreement.
- D. These recitals are incorporated herein by this reference.

Now, therefore, Assignor and the Assignee agree as follows:

AGREEMENT

1. **Assignment.** For and in consideration of monies coming in whole or in part from the _____ *[insert funding source]* and in fulfillment of terms of the Project Agreement identified herein, Assignor does hereby assign, transfer, set over, convey and deliver to the Assignee individually, and as the representative of all the people of the State, the following joint rights (collectively referred to as "joint rights") under the *Easement or Lease*, the recording number of which is listed in *Exhibit 1* attached hereto and incorporated herein by this reference and as described in *Exhibit 2* attached hereto. The term "joint right" means a right that both the Assignor and Assignee may independently enforce under the Conservation Easement or Lease. The grant of these joint rights does not in any way relieve the Assignor of its duties to enforce the terms of the Conservation Agreement or Lease, whether under those agreements or under the Project Agreement.
 - A. **Access.** A right to enter the *[Conservation Zone, as defined in the Conservation Easement, through the Property subject to the Conservation Easement]* *[the Property subject to the Easement or Lease]* at a reasonable time and upon prior arrangement with Assignor and Owner, in order to monitor and evaluate performance, compliance, and/or quality assurance under the Project Agreement.
 - B. **Enforcement.** A right to enforce the terms and conditions of the Conservation Easement and/or Lease and to seek injunctive relief, including restoration, and/or damages for any breach thereof.
 - C. **Amendments.** A right to review and approve any proposed amendments to the *Easement or Lease*. Review and approval by RCO's Director will be for compliance with the terms of the Project Agreement.
 - D. **Termination for Reasons of Impracticability.** A right to review and approve any proposed agreements to terminate the *Easement or Lease*, or release a portion of the *[Conservation Zone]* *[Property]* from the terms of the *Easement or Lease*, before expiration of the term of the *Easement or Lease* for the reason that circumstances have rendered the conservation purpose of the *Easement or Lease* impractical to achieve. Absent approval of the Assignee acting through the RCO or entry of an order of the Superior Court in which the property subject to the *Easement or Lease* is located, the Assignor shall not enter into any termination or release agreement.
 - E. **Stewardship and Management Plans.** A right to review any Stewardship and/or Management Plans, *[including habitat restoration and*

enhancement plans], as defined in the *Easement or Lease*. Review by RCO's Director will be for compliance with the terms of the Project Agreement.

To the extent the rights assigned herein overlap with the rights granted to the Assignor under the *Easement or Lease*, the rights assigned herein shall not be construed to displace those rights. These Rights shall be held in common with Assignor or Assignor's successors and assigns.

2. **Assignee's Exercise of Rights.** The Assignee hereby represents and warrants that its exercise of rights under this Assignment will be consistent with the [conservation] [recreation] purpose defined in the *Easement or Lease* and the Project Agreement.
3. **Representations and Warranties of Assignor.** Assignor hereby represents and warrants to the Assignee that:
 - A. Owner, identified in *Exhibit 1* attached hereto and incorporated herein, has authorized and approved this Assignment.
 - B. Assignor shall enforce the terms of the *Easement or Lease* as provided in the *Easement or Lease*.
 - C. Assignor shall comply with, and the Assignee shall not be responsible for determining compliance with, all applicable federal, state, and local laws, regulations, and policies in its administration of the *Easement or Lease* or the undertaking of any of its rights under the *Easement or Lease*.
 - D. Neither Assignor nor Owner has any claims or causes of action, at law or in equity, with respect to the *Easement or Lease* as of the date provided above.
4. **Obligations.** It is expressly understood and agreed that, by the acceptance of this Assignment, the Assignee has not assumed, and shall not become obligated to keep, fulfill, observe, perform or discharge, any duty or obligation of Assignor under the *Easement or Lease*.
5. **Indemnity.** Assignor shall defend, protect and hold harmless the Assignee, or any officers or employees thereof, from and against any and all costs, claims, fees and expenses arising out of in part or whole the acts or omissions of Assignor and/or its employees, relating to the *Easement or Lease* or in any way relating to Assignor's representations and warranties under this Assignment.

6. **Replacement Property.** The **Easement or Lease** may be extinguished in whole or in part before expiration of its term (if any) under certain circumstances identified in the **Easement or Lease**. Assignor may be entitled to compensation in such event. Assignor shall use all such proceeds for acquisition, restoration and/or enhancement of substantially equivalent property or property interests. Assignor hereby agrees to consult with, and receive the approval of, the RCO in the selection of any replacement property and to assign to the Assignee the same or substantially equivalent rights for access to and stewardship of the replacement property as provided for in this Assignment.
7. **Restriction on Assignment.** Assignor shall not assign the **Easement or Lease** or the performance of any obligations to the Assignee under the **Easement or Lease**, without the express written consent of the RCO's Director, which shall not unreasonably be withheld.
8. **Assignment Term.** The term of this Assignment shall be the same as the term of the **Easement or Lease**, and shall expire upon the expiration date of the **Easement or Lease** (if any).
9. **Disputes.** Any disputes between Assignor and the Assignee under this Assignment shall be governed by the terms of the Project Agreement.
10. **Governing Law/Venue.** This Assignment shall be governed by the laws of the State of Washington. In the event of a lawsuit between Assignor and the Assignee involving this Assignment, venue shall be proper only in Thurston County. Assignor by executing this Assignment acknowledges the jurisdiction of the courts of the State of Washington in this matter.
11. **Severability.** If any provision of this Assignment or any provision of any document incorporated by reference herein shall be held invalid, such invalidity shall not affect the other provisions of this Assignment which can be given effect without the invalid provision and to this end the provisions of this Assignment are declared to be severable.
12. **SCHEDULE OF EXHIBITS:**
 - Exhibit 1 - Owner and **Easement or Lease** Recording Number
 - Exhibit 2- Legal Description of Property Subject to **Easement or Lease**

REMAINDER OF PAGE IS INTENTIONALLY BLANK: SIGNATURE PAGES FOLLOW

ASSIGNOR:

_____ ,

By _____

Its _____

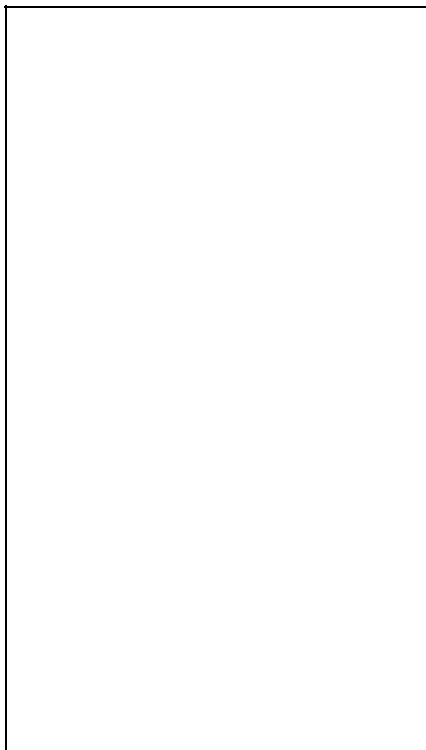
STATE OF WASHINGTON)

) ss:

COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



Notary Public

Print Name

My commission expires

(Use this space for notarial stamp/seal)

ASSIGNEE:

THE STATE OF WASHINGTON, through its Recreation and Conservation Office

By _____

Typed/Printed Name_____

Its: _____

Date:_____

Its Director

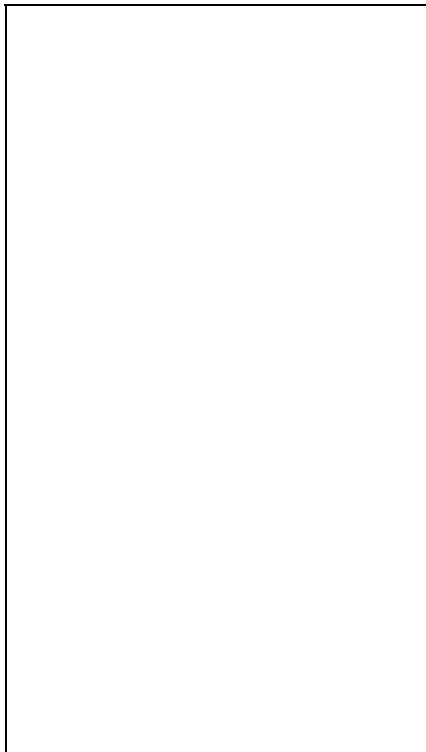
STATE OF WASHINGTON)

) ss:

COUNTY OF THURSTON)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notarial stamp/seal)

Notary Public

Print Name

My commission expires

EXHIBIT 1

OWNER AND CONSERVATION EASEMENT OR LEASE RECORDING NUMBER *(if applicable)*

Name(s): _____

Address: _____

Recording No.: _____

EXHIBIT 2

LEGAL DESCRIPTION FOR PROPERTY

SUBJECT TO EASEMENT OR LEASE

DESCRIPTION OF CONSERVATION ZONE *(if applicable)*

Appendix H Landowner Acknowledgement Form

Landowner Information

Name of Landowner:

Landowner Contact Information:

☐ Mr. ☐ Ms. Title:

First Name:

Last Name:

Contact Mailing Address:

Contact E-Mail Address:

Property Address or Location:

1. (Landowner or Organization) is the legal owner of property described in this grant application.
2. I am aware that the project is being proposed on my property.
3. If the grant is successfully awarded, I will be contacted and asked to engage in negotiations.
4. My signature does not represent authorization of project implementation.

Landowner Signature

Date

Project Sponsor Information

Project Name:

Project Applicant Contact Information:

☐ Mr. ☐ Ms. Title

First Name:

Last Name:

Mailing Address:

E-Mail Address:

Appendix I

Voluntary Acquisition

Voluntary Acquisition Notice to Owner

This notice to the owner on voluntary acquisition meets step two of the acquisition procedures⁴³ outlined in Section 4 in this manual.

In writing, inform the landowner that they are not compelled to sell the property to the agency, rather this is a voluntary transaction and relocation assistance will be provided for tenants that are eligible displaced person in accordance with the Uniform Relocation Act Chapter 8.26 Revised Code of Washington. The value of the property or the purchase price is not discussed at this time. The parties may discuss how the property will be valued and how they will determine a purchase price.

Send this notice to the seller by certified mail or have the landowner sign the notice. Provide a copy of the certified or signed letter to RCO for its records.

⁴³ Chapter 8.26 Revised Code of Washington

Example Voluntary Acquisition Notice to Owner

Date

Name of Owner

Address

City, WA 98XXX

RE: Voluntary Acquisition Notice

Dear *[insert property owners name(s)]*,

This is to inform you that _____*[insert Project Sponsor name]* would like to acquire the property at _____*[insert street address or other property identification]*, if a satisfactory agreement can be reached.

Because state or federal money may be used in the purchase, we are required to let you know that the sale is voluntary. If you do not wish to sell, we will not acquire your property. The _____*[insert project sponsor name]* will not/cannot acquire *[choose one]* your property by condemnation (i.e., through powers of eminent domain).

Because the purchase would be a voluntary, you would not be eligible for relocation payments or other relocation assistance under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 or the state Real Property Acquisition Policy (Chapter 8.26 Revised Code of Washington) or any other law or regulation. However, any tenants that are eligible displaced people located on the property will be offered relocation assistance.

Again, please understand that if you do not wish to sell your property, we will take no further action to acquire it. If you are willing to sell the property, the purchase price will be based upon the fair market value as determined by an appraisal and review appraisal of the property. You also may choose to donate a portion of the purchase price once the fair market value has been established. Please let us know if you have any tenants as they

may be eligible for relocation assistance. If you have any questions about this matter, please contact _____*[insert name]*at _____*[insert contact information]*.

Sincerely,

[Your name here]

Appendix J

Just Compensation and Relocation Notice to Owner

Just Compensation and Relocation Notice to Owner

The notice to the owner for just compensation and relocation meets step seven of the acquisition procedures⁴⁴ outlined in Section 4 of this manual.

Present the landowner with a statement of just compensation which informs the landowner of the appraised value of the property and offers tenant relocation assistance, if eligible

The notice must be signed by the landowner. Provide a copy of the signed notice to RCO for its records. This notice, in effect, opens official negotiations with the owner. No discussions with the owner before this time should include purchase price.

⁴⁴ Chapter 8.26 Revised Code of Washington

Example Just Compensation and Relocation Notice to Seller

Date

Name of Landowner(s)

Address

City, WA 98XXX

RE: Just Compensation and Relocation Notice

Dear *[insert property owners name(s)]*,

This notice is to advise you of the compensation for your property at *[insert street address or other property identification]*. In compliance with state and federal law, the just compensation for _____ *[insert one of the following: fee interest, conservation easement, lease, or other]* in the property is: \$ _____ *[insert the market value as determined by an appraisal and confirmed by a review appraisal]* as determined by the appraisal dated _____ and completed by _____, which was confirmed by the review appraisal dated _____ completed by _____.

By signing this notice, you acknowledge that you were made aware of the just compensation of the property under consideration and provided an opportunity to identify any potential people who may be eligible for relocation assistance. This does not obligate you to sell your property or any rights in it.

Owner(s) signature: _____

Please provide below the name and addresses of anyone living on the property other than the owners or any businesses using the property:

[space name and addresses here]

Please retain this letter for your records, and return a completed copy to me by_____. If you have questions please call me.

Sincerely,

[insert your name]

Appendix K

Preliminary Title Report and Commitment Checklist

Preliminary Title Report and Commitment Checklist

Submittal of this checklist is one of the options for satisfying the preliminary title review as described in Section 6. Fill out and attach this form to the Preliminary Title Report and submit to RCO.

On the checklist, the project sponsor certifies that they have reviewed the title and identifies which encumbrances will be cleared before closing. RCO will review the checklist and contact the project sponsor with any outstanding concerns.

See next page

Preliminary Title Report/Commitment Checklist

RCO Project # _____

Project Sponsor/Applicant Name: _____

RCO Policy on Encumbrances

Property rights acquired with RCO funding must be free of encumbrances that disproportionately limit the value or uses for the public (i.e., habitat conservation or salmon habitat recovery values or the recreation use of a site). RCO will make the final determination on which encumbrances on the property do not conflict with the purpose of the RCO funded project. (Section 5, Manual 3)

I have reviewed the attached preliminary title report or commitment, including all noted exceptions/encumbrances, and recommend the following:

- ☐ No exceptions need to be removed and/or some will automatically be removed/cleared at closing (e.g., taxes, deeds of trust, monetary liens).
- ☐ The following should be removed and we will make every effort to do so:
 - number/identify as listed in report
 - number/identify as listed in report
 - continue as needed

RCO's expectation is that those identified for removal will not appear on the final title policy; failure to do so may result in a withholding of final reimbursement. The project sponsor must document efforts and reasons for any that cannot be cleared.

I certify to the best of my knowledge that with the above action the property and/or rights to be acquired will meet RCO policy.

Print name: _____

Signature: _____

Title: _____

Date: _____

Appendix L

Hazardous Substances Certification

Hazardous Substances Certification

The _____ *[insert project sponsor name]*, as the recipient of funding assistance specified in RCO Project Agreement # _____ *[insert RCO project number]* titled _____ *[insert project name]* does hereby give assurance that it does not know and has no reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for remedial action, was released or disposed of, in or at the _____ *[insert property name]* property or properties that are included in the above-referenced Project Agreement. The _____ *[insert project sponsor name]* further warrants that it has obtained representations and warranties concerning the environmental condition of the property from the seller and has inspected the property to the scope and extent described in the attached (check applicable):

- ☐ *Environmental Site Assessments per American Society for Testing and Materials (ASTM) standards*
- ☐ *All Appropriate Inquiries per U.S. Environmental Protection Agency standards, or*
- ☐ *RCO Property Assessment Checklist [provided in Appendix M].*

Signature of Project Sponsor

Title

Date

Appendix M Property Assessment Checklist

Property Assessment Checklist for Hazardous Substances Certification									
Date:			Property Name:						
Legal Description:					Co. Parcel #				
Street Address									
I. Land Use - Subject Property			II. Land Use - Adjacent Properties			III. Public Records			
Use	Yes	No	Unk	Use	Yes	No	Unk	List/Agency Action	Yes No Unk
Commercial/industrial	()	()	()	Commercial/industrial	()	()	()	Federal superfund	() () ()
Dryland agriculture	()	()	()	Dryland agriculture	()	()	()	Ecology haz sites list	() () ()
Forest	()	()	()	Forest	()	()	()	Ecology leaking UST list	() () ()
Grazing	()	()	()	Grazing	()	()	()	Ecology UST list	() () ()
Irrigated agriculture	()	()	()	Irrigated agriculture	()	()	()	Ecology enforcement	() () ()
Residential	()	()	()	Residential	()	()	()	County dumps/landfills	() () ()
Vacant undeveloped	()	()	()	Vacant undeveloped	()	()	()	County enforcement	() () ()
Other	()	()	()	Other	()	()	()	Fire district response	() () ()
Comment:				Comment:				Comment:	
IV. Field Inspection									
Risk Indicators	Yes	No	Unk	Risk Indicators	Yes	No	Unk	Risk Indicators	Yes No Unk
Abandoned equipment	()	()	()	Chemical spills	()	()	()	Off site water discharge	() () ()
Above ground tanks	()	()	()	Chemigation/fertigation	()	()	()	Oil used for dust control	() () ()
Attractive nuisances/hazards	()	()	()	Discolored soils	()	()	()	Piles of "unknowns"	() () ()
Buildings	()	()	()	Distressed vegetation	()	()	()	Pilings, docks, wharfs	() () ()
* Asbestos	()	()	()	Electrical equipment	()	()	()	Pits, ponds, lagoons	() () ()
* Fiberglass	()	()	()	Excavations/fills	()	()	()	Railroads	() () ()
* Hazardous condition	()	()	()	Flood hazard	()	()	()	Under ground tanks	() () ()
* Lead	()	()	()	Foundations	()	()	()	Unstable soils/slopes	() () ()
* Urea formaldehyde	()	()	()	Garbage dumps	()	()	()	Water sheens	() () ()
Burn piles	()	()	()	Hazmat use, storage, dumping	()	()	()	Wells	() () ()
Chemical filling areas	()	()	()	Manholes, fill pipes, drains	()	()	()	Other	() () ()
Comment (Note: attach additional comments, map and photographs):									
V. Conclusion and Recommendation									
<input type="checkbox"/> No Apparent Risk There is no apparent liability to the department, or it presents an acceptable level of risk, as explained below.									
<input type="checkbox"/> Low Level of Risk that can be Mitigated There is a risk level that can be avoided if certain actions are taken or conditions met, as explained below.									
<input type="checkbox"/> Risk needs Further Investigation There is a potential or known risk that needs a Phase 1 environmental assessment completed, as explained below.									
<input type="checkbox"/> High Risk There is a potential or known risk that outweighs benefit to the department, as explained below.									
Rationale: I reviewed the following documents/undertook the following actions in arriving at the above conclusion: <input type="checkbox"/> Aerial photographs; <input type="checkbox"/> Title search; <input type="checkbox"/> Public Records; <input type="checkbox"/> Personal interview (who?) _____; <input type="checkbox"/> Site inspection; <input type="checkbox"/> Other _____ Comment:									
<div style="display: flex; justify-content: space-between;"> <div style="width: 30%;">Signed</div> <div style="width: 30%;">Title</div> <div style="width: 30%;">Date</div> </div>									

